



6550 N. High Street  
Worthington, Ohio 43085

T: 614-436-3100

### **CITY COUNCIL MEMBERS**

**Bonnie D. Michael**  
President

**Scott Myers**  
President Pro-Tem

**Rachael Dorothy**  
Council Member

**Douglas Foust**  
Council Member

**Beth Kowalczyk**  
Council Member

**David Robinson**  
Council Member

**Douglas Smith**  
Council Member

### **CITY STAFF MEMBERS**

**Matthew Greeson**  
City Manager

**D. Kay Thress**  
Clerk of Council

## **Worthington City Council Agenda**

Louis J.R. Goorey Municipal Building  
John P. Coleman Council Chamber

Monday October 01, 2018 ~ 7:30 PM

### **1. Call To Order**

### **2. Roll Call**

### **3. Pledge of Allegiance**

### **4. Visitor Comments**

### **5. Approval of the Minutes**

#### **5.A. Meeting Minutes - September 17, 2018**

*Recommendation:* Introduce and  
Approve as Presented

### **6. New Legislation to Be Introduced**

#### **6.A. Resolution No. 52-2018 ReCAP Award - DLZ Corporation (6121 Huntley Road)**

Authorizing the Award of Re-emergent  
Corridor Assistance Program Funds to  
Help Improve Facility Exterior Facade and  
Streetscape Along Certain of the City's  
Commercial Corridors (6121 Huntley  
Road).

*Executive Summary:* This Resolution  
approves a Re-Emergent Corridor  
Assistance Program (ReCAP) award in the  
amount of \$25,000 for DLZ Corporation,  
located at 6121 Huntley Rd.

*Recommendation:* Introduced and  
Approve as Presented

**6.B. Resolution No. 53-2018** Right of Way Permit Renewal - Wide Open West Ohio, LLC

Approving an Agreement and Permit for and between Wide Open West Ohio, LLC, a Delaware Limited Liability Company, to Operate and Maintain a Telecommunications System Within the City of Worthington Pursuant to and Subject to the Provisions of Chapter 949 of the Codified Ordinances of the City of Worthington.

Executive Summary: This Resolution approves a Telecommunications and Utilities Permit agreement for Wide Open West Ohio to utilize the City's rights of way.

Recommendation: Introduce and Approve as Presented

**6.C. Resolution No. 54-2018** Right of Way Permit Renewal - XO Communications Services, LLC

Approving an Agreement and Permit for and between XO Communications Services, LLC, a Delaware Limited Liability Company, to Operate and Maintain a Telecommunications System Within the City of Worthington Pursuant to and Subject to the Provisions of Chapter 949 of the Codified Ordinances of the City of Worthington.

Executive Summary: This Resolution approves a Telecommunications and Utilities Permit agreement for XO Communications Services to utilize the City's rights of way.

Recommendation: Introduce and Approve as Presented

**6.D. Ordinance No. 45-2018** Central Ohio Health Care Consortium Agreement for 2019-2021

Amending, Adopting and Ratifying the Amended and Restated Central Ohio Health Care Consortium Joint Self Insurance Agreement and Approving Participation by the City of Worthington in the Central Ohio Health Care Consortium for the Three-Year Period Beginning January 1, 2019.

Executive Summary: This Ordinance amends, adopts, and ratifies the Central Ohio Health Care Consortium (COHCC) Joint Self Insurance Agreement for the next three-year trust cycle, and approves the City's continued participation in the Consortium for the period 2019-2021.

Recommendation: Introduce for Public Hearing on October 15, 2018

**6.E. Ordinance No. 46-2018 Additional Appropriation**

Amending Ordinance No. 41-2017 (As Amended) to Adjust the Annual Budget by Providing for Appropriations from the General Fund and Downtown Worthington Municipal Public Improvement TIF Fund Unappropriated Balances.

Executive Summary: This ordinance appropriates additional funds for the purpose of funding police overtime and costs assessed by the County for collecting property tax revenue.

Recommendation: Introduce for Public Hearing on October 15, 2018

**7. Reports of City Officials**

**8. Reports of Council Members**

**9. Other**

**10. Executive Session**

**10.A.** To consider compensation of an employee or public official

**10.B.** To consider the appointment of an employee or public official

**11. Adjournment**



**CITY OF WORTHINGTON**  
**Worthington City Council Minutes**  
September 17, 2018

6550 N. High Street  
Worthington, Ohio 43085

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**CALL TO ORDER – Roll Call, Pledge of Allegiance**

Worthington City Council met in Regular Session on Monday, September 17, 2018, in the John P. Coleman Council Chambers of the Louis J.R. Goorey Municipal Building, 6550 North High Street, Worthington, Ohio. President Michael called the meeting to order at or about 7:30 p.m.

**ROLL CALL**

**Members Present:** Rachael R. Dorothy, Beth Kowalczyk, David Robinson, Douglas K. Smith, and Bonnie D. Michael

**Member(s) Absent:** Douglas Foust, Scott Myers

**Also present:** City Manager Matt Greeson, Assistant City Manager Robyn Stewart, Director of Law Tom Lindsey, Director of Finance Scott Bartter, Director of Service & Engineering Dan Whited, Director of Planning & Building Lee Brown, Director of Parks & Recreation Darren Hurley, Chief of Fire John Bailot, Chief of Police Jerry Strait, Clerk of Council D. Kay Thress

There were ten visitors present.

**PLEDGE OF ALLEGIANCE**

*President Michael invited all to stand and join in reciting the Pledge of Allegiance to the flag.*

**VISITOR COMMENTS**

There were no comments.

**APPROVAL OF THE MINUTES**

- Regular Meeting – September 4, 2018
- Committee of the Whole Meeting – September 10, 2018

**MOTION**

Ms. Kowalczyk moved, Ms. Dorothy seconded a motion to approve the aforementioned meeting minutes as presented.

**There being no additions or corrections, the motion to approve the minutes as presented carried unanimously by a voice vote.**

## **PUBLIC HEARINGS ON LEGISLATION**

### **Ordinance No. 42-2018**

Authorizing the Final Plan to the Wilson Bridge Corridor for 181 East Wilson Bridge Road and Authorizing Variances (Oxford Circle, LLC. c/o David Hodge).

**The foregoing Ordinance Title was read.**

*Mr. Brown explained that the request before Council is for a 32-unit multifamily apartment complex on the south side of East Wilson Bridge Road. He presented a history of the development of the Wilson Bridge Road zoning adopted by the City Council in 2016. Two parcels on the southside of East Wilson Bridge Road were rezoned from R-10 single family residential to medium density residential to avoid the building of any new single family residential on the south side of East Wilson Bridge Road. The south side was recommended for a mixture of professional office and medium density residential.*

*Mr. Robinson asked Mr. Brown why just those parcels were re-zoned and not the entirety of the proposed residential area. Mr. Brown reported that when the guidelines were established for the district the goal was to rezone the entire corridor to match up with the zoning districts. The southside of East Wilson Bridge Road was the focus but there was pushback from existing property owners on re-zoning to a non-confirming use. Non-confirming structure also caused multiple problems. The approach has been to go after vacant parcels and begin the re-zoning process to avoid new dwellings being constructed.*

*Ms. Kowalczyk inquired as to why we would not want a new house on that property. Mr. Brown shared the long-term vision for the southside of Wilson Bridge is for office or medium density residential. He understands that in 2011 there was a discussion about the entire southside being recommended for professional office, however, it was eventually modified to what is seen today with office on the western portion and medium density residential on the eastern portion.*

*Mr. Brown explained that over the years there have been proposals on these parcels in varying configurations, but nothing has come to fruition. Looking at these two parcels, Lot #17 has never been built on, Lot #16 did have a house on it decades ago but has recently been vacant. They will be combined as part of the request to develop multi-family residential.*

*The Municipal Planning Commission looked at the guidelines and zoning categories in September and it was introduced and discussed at the Committee of the Whole Meeting in October. Discussion occurred regarding density, height and tree fees and modifications and changes were made. The guidelines and zoning categories were adopted with*

*modifications in April of 2016 and it went into effect in June of that year. The following April, after the Council Retreat, Council asked that the re-zoning those vacant two parcels begin. It went to the MPC in April and was approved by Council in May, effective in July 2017.*

*At the end of 2017 the City began working with the current applicant Mr. Kenney on the Kemper House on Proprietors and 161. Previously we had spoken with multiple other developers who wanted to do something on the south side of East Wilson Bridge Road, but they wanted to clear cut the site before zoning went into effect or double the density and/or height. We floated this site to Mr. Kenney while working on the Kemper House, asking him to look at this piece of property.*

*Mr. Robinson asked about the other developers who expressed interest and if they did not proceed because of the tree ordinance specifically and the associated financial costs. Mr. Brown replied that most of the developers wanted higher density. The trees were a concern; however, the language had not been adopted at that point in time.*

*Mr. Brown explained that the current applicant is requesting 32-units that are a mixture of one, two, and three-bedroom on the southside of East Wilson Bridge Road in two different buildings. The price point will be between \$800 and \$1,250 per month. Mr. Robinson inquired how that compares to rents at The Heights. Mr. Brown responded that the cheapest one-bedroom unit without a garage is going for \$900. The three-bedroom, two-bath is starting at \$2,000. He added that The Heights price also includes amenities such as pools, concierge, and clubhouse.*

*Mr. Brown described the layout of the proposed plan. He referenced an earlier question from Ms. Dorothy relating to one of the variances that deals with the width of the curb and how it would interfere with a recreational path. Ms. Dorothy said that she has seen people get hit when vehicles pull through the right-of-way and she is very concerned about people's safety. She is worried about the width and drivers pulling through and colliding with people whose primary mode of transportation is not a car. President Michael asked if it would be possible to put in a stop sign on the side of the property, so that the person coming out has to stop before coming to the road. Mr. Brown replied that we could work with that and it seems reasonable. Ms. Dorothy commented that just having markings on the road would be helpful to identify that people are crossing.*

*Mr. Brown reviewed that it is part of the plan for the Wilson Bridge Road Corridor to have a ten-foot multi-use recreational path starting from High Street connecting to the Community Center and eventually to the Northeast Gateway Project. Part of this includes a five-foot sidewalk that will run parallel to the multi-use path for the residents that are going out to use it, so they do not have to interact with the recreational path. He added that when looking at where the multi-use path and sidewalk will be, it is not as wide as the 76 feet in width but narrows down to 25 feet and then to 22 feet which meets minimum code requirements for two-way traffic.*

*President Michael inquired as to what is in the middle of the development. Mr. Brown replied there would be an internal loop with mailboxes. Many of the existing trees would be preserved in the middle area and there will be existing trees along the periphery and the southside. This will predominately be where traffic loops around and can come in and out of the site. Seven garages and a dumpster will also be in this location.*

*Mr. Brown detailed how the Fire Department had been consulted regarding maneuverability of the site for their equipment and vehicles. When asked by Ms. Dorothy why a ladder truck would be used since these are two-story buildings, Mr. Brown replied that if there was a need to get to a fire in the back building, a ladder truck can reach that area. Chief Bailot confirmed Mr. Brown's comments were correct. He added that whenever there is a report of a structure fire, the engine, the ladder, and the medic unit along with mutual aid agencies respond regardless of whether it is residential or commercial. The ladder truck could be the first unit on scene. It has a pump, water, fire hose, and can do the same duties as the engine. The ladder is also used for rescue, so if there is someone trapped in a multi-family building the ladder truck would be used. Ms. Dorothy shared that she appreciates the balance between the daily needs of people who are out and about walking, biking, etc and the increased pavement.*

*Mr. Brown added that as part of the ten-foot multiuse path that is being installed, we are also getting additional right-of-way dedication from the applicant. Sidewalk will be installed as will street trees and lighting as part of this project. Other enhancements will include bike racks at each building, benches, and decorative light poles around the site. There will also be enhanced landscaping including additional trees and landscaping on the periphery, the southside and internal loop area. The applicant also took the initiative to work with and schedule their own meetings with property owners on Northhigh Drive to go over the proposal with the residents, who have been happy. He explained that staff worked with the applicant on this project to utilize brick, hardy plank, and board and batten versus vinyl siding.*

*Mr. Brown reported there being four items that he wanted to provide greater detail on as the variance requests deviate from code requirements.*

- 1) The driveway to exceed 45-feet in width at the curb line before it narrows down. There are several other businesses throughout Worthington that have a wider drive aisle, so it is not inconsistent with what is seen within East Wilson Bridge Road and other corridors.
- 2) The second variance is to permit buildings to be closer than fifty feet in residential districts to the property line. If we would have proactively re-zoned the corridor, we would not need this variance.

*Mr. Robinson referenced the new house to the west that was built three years ago and asked when the properties were rezoned. Mr. Brown replied that they were re-zoned in 2017. Mr. Robinson asked what zoning was prescribed at the time when that house was built. Mr. Brown said that it was in the R-10 single family district. Mr. Robinson inquired about the lots where the proposed development would be located, asking what the side*

*setback was after the re-zoning in 2017. Mr. Brown replied that the two lots were re-zoned to the WBC-1 district. The strict letter of the code is a 50-foot setback from the residential district. Mr. Robinson asked if the house was there when the rezoning took place. Mr. Brown replied that is correct. President Michael noted that the builder of that house was informed ahead of time that the City was looking into putting a multi-unit property in. Mr. Brown shared that he met with the current property owner several times before he bought the house, documenting their interaction with the applicant using certified mail to document what was planned for the corridor.*

- 3) The third item deviates from the code requirement in relation to the trees. When we did the initial layout for the code requirements, we looked at doing a tree fee and it was a much higher fee at the time. We looked at 6-inch caliper or larger and the original proposal was for \$350. After looking at what other jurisdictions charged, this was lowered to \$150 for trees that are 6-inch caliper or larger.

*Mr. Brown explained that he, Ms. Bitar, and Mr. Daugherty the City Arborist walked the site with the property owner to determine if there were any special trees or something unique on the site. They walked the site to see what could be incorporated into the development and what should be preserved to help guide applicants. The request before Council is to remove 1,688 caliper inches. They are preserving 404 additional caliper inches and adding an additional 343 units. The strict letter of the cost for removal of the trees, without counting the credit, is going to be \$253,200 (\$201,750 after credits). Previous property owners and developers wanted to come in and completely clear cut the site. Mr. Brown emphasized how he and Ms. Bitar pushed back on this and encouraged working together to get the type of product the City is wanting. Otherwise, boards and commissions and Council would look negatively at clear cutting the site. That is why we have not seen any activity on that parcel. Staff has worked with the developer to try to get a better layout and product with that tree fee. That is one of the reasons staff has recommended approval to grant the waiver from the tree requirement.*

- 4) The final requirement requesting variance approval is the request for an additional 2-units per acre. Code allows up to 14-units to the acre and they are requesting a total of 4 additional units.

*Mr. Brown described how this development offers a different product than The Heights. He explained that the proposed development went before the Municipal Planning Commission for recommendation to Council on July 26<sup>th</sup> and the chairman of the MPC is present tonight.*

*Mr. Robinson requested clarification about the rationale for the fourth variance request. The code states that the number of units should be between 10 and 14 with a maximum of 14. Mr. Brown agreed. He reported the rationale is to provide a range of bedrooms and options for housing. It did not seem to be a substantial deviation from the code. When the code was created, it seemed to be subjective with a range allowing between 10 and 14 units. He is not sure what the rationale was for when the original plan was adopted in 2011. President Michael stated that she is wondering that also.*



*Ms. Kowalczyk asked if the tree fee was strictly applied to the Wilson Bridge Corridor or if it is used elsewhere. Mr. Brown replied that we do not have a tree ordinance in the City of Worthington. When we did the Wilson Bridge Corridor, tree preservation and the associated fee were added for these two parcels and are the only parcels in the entire city that are subject to the tree fee. When asked by Ms. Kowalczyk if the fee was created in response to some of the developers' interest in clear cutting the property, Mr. Brown agreed. Staff looked to see if there were any unique trees that needed to be saved or is there a way to incorporate certain trees into the development itself.*

*Mr. Robinson shared that he went out to the site several weeks ago after reading the plan. The aerial photographs and street front photographs appear barren and do not do justice to what he labels as an emerging forest. He described how he took photos to try and get a representation of what the property looks like and then asked Ms. Thress to display those photos for Council.*

### **Mikel Coulter – 686 Evening Street**

Mr. Coulter shared that Mr. Brown asked him to come to the Council meeting to see if anyone had questions about why the MPC came to the conclusions and recommendations that they did. He explained that this property has been in front of the Commission for a few years and is part of an effort to redevelop the entire south side of East Wilson Bridge Road. It has some challenges and it has some trees that he would describe as "Trash Trees." They looked at what is the best of use of the property. There have been talks with several developers over the years. One person came in wanting 26 units per acre and without exception everyone on the Commission felt like this was too many.

*President Michael asked how many units are being proposed per acre currently. Mr. Brown replied 16 units per acre. Previous groups have proposed developing three parcels, including the one with the house on it before it was sold as well as the parcel to the east. President Michael asked what happened to the parcel to the east. Mr. Brown replied that the parcel was sold last year. Staff met with the new owner to let them know what was going on in the corridor. When President Michael asked if we offered to purchase the property, Mr. Brown replied that they did not want to sell.*

Mr. Coulter explained that the current number of units is a compromise from the number Mr. Kenney originally proposed. A major part of the discussion was around the trees that were there and what are the larger, special trees we would want to keep. The homeowner to the west had attended all the MPC meetings. At the last meeting, one of his requests of the developer was to consider adding more trees along the property line. Mr. Kenney agreed to the request. There have been several meetings between the developer and residents to the south. At the end of the day we were using the trees, the layout, and talking about the road access as a bargaining chip to get the architectural aesthetics desired on the buildings. Everyone felt comfortable with the balance of where the project ended up. The commission is comfortable with this and it was a unanimous vote.

*When asked by President Michael what the material was in between the segments of brick, Mr. Coulter replied that is hardy plank. Mr. Brown explained that this is not in the Architectural Review District, but additional requirements were added to the design guidelines for this corridor relating to architecture and better materials.*

*Mr. Robinson questioned Mr. Coulter's thinking about how the issue of density is approached when the code clearly states between 10 and 14 units. He asked why we would not stick between what is prescribed by the code. Mr. Coulter replied that often developers come in and ask for the moon. If they get it, they have hit a home run. He has been an architect since 1982 and when he looks at projects like this he looks at a balance. We are not here to see how we can kill a project. His personal position is to determine what we can do to make a project that works for both the developer and the City of Worthington. Sometimes that means compromise. He looks at the size of the lot, the way it lays out, the distances from the houses around it, what the impact on the neighbors will be, and whether it will be onerous on them. The Commission was also interested in making sure that a quality developer come in and do this project. He has been involved with a number of projects over the years that he has regretted working with the developers that he did. So, this piece of property has laid fallow for a very long time and in part we wanted something to kick off what we are wanting to do over there, but we wanted it to be the right project. We talk a lot about gateway projects, what is the first thing you see and what does it represent. We felt like this was a good representation of what we wanted to see in terms of the quality of the development along East Wilson Bridge Road. So, we were willing to give in respect to the number of units but be reasonable about it. Mr. Brown shared that in regard to The Heights, when it came through in 2013 the unit count was actually 73 units to the acre, but at the time we looked at the entire site itself and the mixture of uses. When broken down to what was originally included in the mall, it breaks down to 10-12 units to the acre.*

#### **David Hodge, Underhill and Hodge – 8000 Walden Parkway Ste 260, New Albany**

Mr. Hodge explained that this project started many months ago in meetings with staff and others on his client's other project in town, The Kemper House. That project has almost been universally well received and will be a great asset to that corner and a gateway to the City of Worthington. They were advised early on by staff to review the Wilson Bridge Road Corridor Study document that has been in place since 2011. They were also advised to see some of the surrounding property owners and had a great meeting with them. The property owners were impressed with the southern border, the openness to fencing and landscape preservation, and how the northern border framed Wilson Bridge Road. Only one neighbor in the immediate area showed up at their underlying meetings and that was the neighbor to the west. That individual acknowledged that he knew a project of this ilk was on its way to the property, having been previously contacted by staff. His only concern was why the perimeter was not going to extend down the south and if there could be a fence. Ultimately, they ended up with an elegant solution to that with some brick posts along the side with arborvitae in between. The property is zoned for this use and according to the Wilson Bridge Corridor Study this is precisely the type of housing in this location that is under served in the City.

After meeting with neighbors and the submission of the application, the project was reviewed and scrutinized multiple times by the MPC who unanimously approved it, recommending Council adopt the final plan. It was recognized by everyone leading up to tonight that this is the correct land use, at an appropriate density, and could provide a spark to kickoff other activity in the corridor. In 2015, Worthington considered the Wilson Bridge Road Corridor Enhancement Plan and this in particular is Focus Area #5 of that plan. What that recommends is a recreational pedestrian path along the frontage and this project donates the right-of-way to the City of Worthington to accommodate that recreation plan to connect folks to McCord Park.

Mr. Hodge suggested that this application before Council meets the spirit and the letter of the Wilson Bridge Corridor Code and policy in the following ways:

- |                            |                |                   |
|----------------------------|----------------|-------------------|
| • Setbacks                 | • Lot Coverage | • Landscaping     |
| • Right-of-Way             | • Pedestrian   | • Lighting        |
| • Dedication for the Trail | • Access       | • Signage         |
| • Screening                | • Design       | • Public Spaces   |
|                            | • Materials    | • Bicycle Parking |

It is here with a positive recommendation from the MPC, positive recommendation of City Staff, and the implied endorsement of neighbors who have indicated their satisfaction throughout the process.

He addressed several items, specifically density which a variance has been requested for additional units overall. The Wilson Bridge Corridor Study speaks in its introduction about how the plan is supposed to be used and he has dealt with the interplay between plans and guidelines and law. This plan is a guide for how decisionmakers are to view these things. He read from the plan that, “The Plan is intended to be used on a daily basis as public and private decisions are made concerning new development, redevelopment, capital improvements, economic incentives and other matters affecting the corridor. The following is a summary of how decisions and processes should align with the goals and strategies of the Plan.” He then noted step seven which is to “Be Flexible” and reads “It is intended to serve as a guide to help the city, development community, and local residents plan for the redevelopment of the corridor. The plan is intended to be flexible and fluid and should be updated and amended as appropriate. As projects, policies, and programs develop over time they may not look exactly like the images in the document, but they should address the intent of the plan. The sketches and descriptions herein provide a broad sense of how particular projects may function within the larger corridor and provide a sense of the intended development character.”

Mr. Hodge detailed when talking about density, the discussion is about how it fits into the context, whether there is adequate parking and building heights. In this project there will be more than adequate parking, we meet the building height requirement of the code, and four units in terms of the interface with adjacent properties and the public right-of-way will

not make a foot of difference in terms of ways it reacts to the community. But it does make a difference to the developability of the property.

*President Michael questioned what difference it makes to the developability of the property. Mr. Hodge explained that it is a difference in terms of how you can make economic sense of a project like this. That is important to anybody who is going to come in and do this working with all the variables involved in development.*

Mr. Hodge explained how other applicants were concerned and he represented one of those applicants and it did not come to fruition though there were many meetings with Mr. Coulter, Mr. Brown and Ms. Bitar. It was the owner of the property who could never get comfortable that he was going to be able to file an application and work through the project successfully, with much of that having to do with the tree fee and the building material requirements. He had spent a great amount of time studying the tree fee and how it applies to this site and has encouraged people not to come over to this property and cut all the trees down. This tree fee would be in excess of \$200,000 which is more than the current owner paid for the property. We have thoughtfully and sensitively approached the tree preservation issue with this plan. It is a tough one, but a variance is absolutely necessary for the developability of the property.

*Ms. Dorothy asked how quickly this project would move forward if Council does approve it. Mr. Hodge replied that from a legal perspective, they are in an administrative process, not a legislative process. There is a 30-day period during which someone could file an appeal in court and thereafter Mr. Kenney will close with the property owner. He would then work to pull permits and begin construction by the spring if not before.*

*President Michael asked Shawn Daugherty, the City Arborist to address the tree issue. Mr. Daugherty explained that he walked the site with an eye towards identifying specimen trees that you would want to protect. They did not really see many of those trees. What they did see was a young forest in an area that has gone fallow for a while. Forests grow in successions and this one is in the first succession of forest where you have certain species that come in and it takes a little while for more desirable tree species to become dominant. They are there, but they are still fighting with the least desirable trees on the site. Eventually, if things are let go they will become dominant but right now it is young and very thick.*

*Ms. Dorothy asked if we have any other zoning for residential that requires the preservation of trees. Mr. Daugherty replied there is none to his knowledge. Mr. Brown reported there being nothing like that in the planning and zoning code. There are requirements to add trees and with any project we try to incorporate existing trees.*

*Ms. Kowalczyk asked about the tree fee and the waiver of the fee in this situation. She questioned if this fee is something we would consider for other properties in the future. Mr. Brown said that we would not run into a similar severity in the corridor. He believes if we go towards an actual tree ordinance issues such as caliper inch size and appropriate fees would need to be delved into in more depth. This one was a combination of all of*

*those. He explained that when you develop a code and then apply it in the real world, sometimes it does not make sense. This needs to be looked at again. President Michael noted that part of Council's deliberation was looking at the fee as a deterrent to clear cut. These are the only two pieces of property with as many trees compared to rest of the corridor. Ms. Kowalczyk replied from that perspective, the tree fee has accomplished its goal because it has caused developers to consider that when looking at the property. Mr. Brown shared that just the discussion caused developers to back off. Mr. Daugherty added that the Arbor Committee would be able to help with any rewrite.*

### **Paula Deming – 6775 Alloway Street West**

Ms. Deming explained that she has lived in Worthington for 23 years and she is a long-time environmentalist. She is here tonight to speak from her viewpoint as a member of Sustainable Worthington, an organization concerned with a lot of different things including forest lands and urban forest canopy. The plan being presented is a beautiful plan and it will enhance this particular corridor immeasurably, it is really nice. She agrees with Shawn Daugherty that it is a young forest and it is not particularly valuable when talking about specimen trees. If they showed up in her yard she would call her arborist to take them out. For landscape purposes the trees onsite may not have particular value. But, if you are talking about a forest, which this is a young forest, it takes on a different kind of value. It is being treated as a unit, not a bunch of specimen trees. If you are taking down the forest, which is what would be done, you can save a little bit, but what you are saving does not have much landscape value.

She wants to show there is a difference between what is there and what will be there and how you value trees. So, what she is concerned about is that we are going to be losing a lot of forest canopy. We must have trees in this city. They are our lungs. We are also dealing with an ecosystem with wildlife living there. They are going to be forced out and have to find other places to live. What will be done about bringing in other trees. When looking at the tree replacement fee, it is a very useful thing for the City. What will we do about the lost canopy, we still need trees to act as our lungs. She could see if we are looking for a compromise, there could be some plan in tandem with developing a replacement forest or a new park. She would be open to something like that and does not want to see this cut down. This is a site that is appropriate to develop, so she likes the plan but there is that other piece and she asks Council to consider what could be done about that.

*President Michael asked if Ms. Deming had any suggested locations. Ms. Deming replied that Sustainable Worthington has been working for ten years on a forest restoration project at East Granville Park and Moses Wright Nature Area which was a monolith of honeysuckle before they took it in hand. It has become a beautiful forest and somewhere that people want to go. If we had more places like that in Worthington she would very much like having that. She does not know where, but she suggested starting at Parks and Recreation, talking with the City Arborist, and come out with some plan. Let us get ideas rather than just taking down the trees that are forest.*

**Susie Kneedler – 263 Weydon Road**

Ms. Kneedler detailed how she and her husband bought their house in 1992 and have lived here for 27 years now. What she loved about Worthington were the trees. She notices a difference even now because of the loss of the pear trees lining the streets. Whole parts of the area around Highgate and Evening Street now have no trees. She looks at Mr. Robinson's photos and thinks what a beautiful forest even if it is first succession and if only we could keep that as a park and build housing someplace else. For her, what we would be doing by waiving the tree fee is essentially giving a \$200,000 donation to a private company for profit and as we heard it is a matter of making economic sense. She thinks about what we could do with \$200,000.

She explained how trees have not been replaced because they are expensive, hard to plant, and take time to grow. She proposed donating some of that \$200,000 to allow homeowners and renters to plant more trees.

*President Michael noted that City funds cannot be used for improvements to private property. Ms. Kneedler replied that by granting variances, that is essentially contributing to private interests even though it is not technically against the law. President Michael reiterated that if we charge the fee then those funds would become City funds and cannot be used for planting things on private property. Mr. Lindsey confirmed that was correct.*

Ms. Kneedler replied she understands, but what we are doing by granting variances is a donation. We have some houses built right up to the sidewalks on Evening Street and what was built on West Dublin Granville Road on what was formerly a beautiful meadow. There is very little greenspace with these developments. She wants to speak for preserving as much forest wild-type lands, not just ornamental one-by-one trees, planting more street trees, and more trees even in the Olentangy Parklands and other parks. It changes the ecosystem having trees together. If we donate \$200,000 to a private company we are losing the way that the trees clean the air, prevent erosion, stop runoff, and all of the beauty. The people of Worthington have not been asking for more traffic on Wilson Bridge Road, more pollution from all of the cars, and fewer trees to beautify our lives.

*President Michael noted that there have been a large number of people stating that they want single floor living space as community need also. That is in essence what this project does. There is the preservation of the trees and greenery, but there are also a large number of residents that want to downsize and be able to stay in the City of Worthington with single floor living space. There are two competing interests amongst residents.*

Ms. Kneedler expressed that she still believes we need to have the tree fee to replace what we would be losing in this forest. Additionally, we should look harder for already built on spots instead of taking our open spaces that really do make our lives more beautiful.

*Ms. Kowalczyk agreed that we have heard quite a bit about the desire for empty nester, single floor housing particularly for seniors. We rank among the lowest in the area for availability of senior housing and every time she meets with folks they are asking what is*

being done about that. She really appreciates this as an opportunity to address that need and how important it is to revitalize this area. She also appreciates the comments that were made about needing a plan for looking at our trees in the City. There has been some thought in certain areas, but she is unsure if there is a comprehensive plan. Having some more thought into how we go about incentivizing tree preservation and looking at the City as a whole may be a good project to embark on. President Michael asked Mr. Hurley about his staff's work in this area. Mr. Hurley replied that one of the things done in Parks and Recreation along with the Service and Engineering department is that they track the tree population as part of the Tree City affiliation. In large part to Mr. Daugherty and the Tree Nursery, we are not in bad shape currently. Mr. Daugherty agreed with Mr. Hurley's comments. Staff does keep track of trees and the trees being dealt with are public trees. Ms. Kowalczyk said there has to be some flexibility when looking at development but also perhaps some thought given to how to approach this issue in a way that could yield some incentives for preservation without having to put in a fee we have to waive. She also wanted to give a shout-out about Moses Wright and the work that Sustainable Worthington has done. It is a hidden gem and she hopes we can continue to provide support for it.

Ms. Dorothy expressed that she is fairly happy with how this development plan has evolved and balances the needs of the entire community. We are looking at not only Worthington but the entire region with housing needs. We need workforce housing and housing for persons to downsize and stay in Worthington. She hears all the time from people that they cannot find a place to live, whether it is to move here or stay here. We need more housing. At the same time, we need to preserve the natural aspects of Worthington and do it sustainably. This is a place to build upon and it is not a natural forest area. We do have these parcels and are required to have the preservation of trees which they are doing a significant amount. Yes, the buildings are close to the public right-of-way but that is what makes it a nice place for people to hangout at. People like downtown Worthington because of how close the setbacks are and how big the sidewalks are. We do have a lot of nature areas in Worthington that need a significant investment. She thanked Sustainable Worthington for Moses Wright. She would like to see more people adopt the Rush Run Preserve that is over 30 acres of forest that could use much of love and hugs. She appreciates everything done by the Arbor Committee. She also appreciates everything done by everyone involved with trying to bring this project to life. It is a nice balance that she would like to see move forward.

Mr. Robinson stated that an immense amount of work has been put in over the years on this project. Everyone who has spoken tonight, their intentions are positive and they all want a positive outcome from this project. With that being said, he cannot support this project with the variances as they currently stand. His view of variances is that they are warranted if there is something extraordinary about a particular parcel or project that warrants the deviation from code. He does not believe that a couple of the variances proposed meet that standard and as such, approving this project with these variances has some potential negative consequences for our city. He can think of three specific areas. The first is the City's relationship with developers, setting a bad precedent by approving sixteen units per acre when the median number prescribed in code is twelve. That is a 33% increase and not an insubstantial number. He posited that if a developer came and

*proposed 65 units when the code calls for 50, would that not be a substantial deviation. If we grant a variance on density when it is a simple and straightforward project, how can we say no to the next developer. Ultimately this kind of practice is not good for business either because an immense amount of time and effort is spent developing proposals and projects with developers anticipating variances being offered. When City Staff and Council have to debate the variances, business would be better served by realizing that Worthington's code means what it says. If the numbers make sense, then they can proceed with the project and if they do not then they do not.*

*Secondly, he stated his belief that granting variances of this nature presents problems for the relationship between City Staff and Council. If staff comes to Council in the future and asks for rezoning with a prescribed density, how are we to understand what is really being asked for. He wants to know what is being proposed is what is actually going to happen. Particularly when we are looking at several large potential PUD developments. He wondered if what is laid out in the PUD, is going to be what we actually get once we pass legislation. He questioned if they will they come back asking for additional variances. This is a serious issue that he does not believe we should entertain lightly.*

*Thirdly and most significantly, he asserted that this presents problems between City Council and the residents of our City. For those residents paying attention to the granting of variances, they may think the granting of variances is a somewhat subjective matter. He questioned if they are to appear before ARB and BZA, can they expect a similar treatment. What if the board is told that they cannot use the materials that they want to because of financial hardship, he asked if we then grant them a variance or do we stick to what we want in our code. For these reasons he believes that variances should not be given out without substantive arguments and rationale. He does not believe this has met that standard and he asks that the developer reconsider their plans, table it for tonight, re-approach MPC with their proposal in accord with code with justification for variances before bringing it before Council again.*

*President Michael noted that there have been many occasions where a developer has been able to go in, with zero variances, and do a project that would require clear cutting everything. There have been times where variances have been granted so there would be additional greenspace to make it so that there would be the preservation and addition of more greenspace. For example, when McBurney Place was developed there were two plans, one was a scorched earth plan with no variances and no greenery, or a second plan with the granting of variances and the opportunity to have a significant amount of additional greenery. Sometimes it can be a win-win for the entire community. Mr. Robinson said that he would not disagree with that and is not opposed to variances in principle, but that the case needs to be made the circumstances are extraordinary and the community will benefit. He expressed that he does not see that in this case, particularly when it comes to the density request.*

*Mr. Smith questioned if we vote on this tonight, absent two councilmembers, which rules regarding quorum and majority would be utilized. President Michael explained when there was a situation like this, there would need to be four votes because a majority would be*



*one over half. The developer does have the opportunity if they choose to have this tabled, so it can be heard when all councilmembers are present. There is a third option as well to go back to the MPC. Mr. Smith suggested in that case that his final comments needed to be taken into consideration.*

*Mr. Smith explained that he remembered the discussion that was had regarding the tree fee years prior. Even though we did not have this particular development in mind, the scenario that we played out was not dissimilar to this development. The fee that we came up with was essentially a compromise to what could have been a higher fee. With those scenarios, the tree fee was the starting point to a negotiation, not to be waived completely. Understandably it is a very large price to pay, but he stated his belief that there may be a happy medium here. In reference to Mr. Robinson's points about density, when working through the corridor study in spirit and context, 10-14 units per acre was a compromise. The intention was for single floor living, patio homes geared towards senior living. He just does not see that here. He appreciates the development opportunity and he can see it being valuable, but he cannot get behind the variances.*

*Mr. Brown brought up that they are required to do a public area fee that will be charged when they pull their building permit in addition to the tree fee. When asked by President Michael what that fee would be, Mr. Brown replied that it is \$250 per unit, so approximately \$8,000.*

*President Michael described to the developer how at this point, there will not be enough votes to have it approved tonight. She expressed how she believes it is a very good development and it is something we have worked on very hard to have come in as part of a long running community master plan for the corridor. This project fits into that master plan and that there is a wonderful job done with the landscaping. She can perhaps see a little bit of a tree fee, but there is an awful lot being put into this project that is needed.*

*Mr. Hodge stated that he appreciates the discussion and the remarks from Mr. Robinson and Mr. Smith. He expressed that he wishes there could be a back and forth debate because he feels that he could bat the ball back on several of the points that were brought up. In hindsight he recognizes that he could have reached out to folks on Council leading up to tonight's meeting and maybe he could have those discussions after this item is tabled. He does appreciate the acknowledgement that they are in earnest on the project and he believes that both councilmembers are earnest in their concerns as well. He detailed that to him, a variance comes into play when a person cannot put their property to a use permitted by the underlying zoning because of the regulation being too onerous. In this situation the natural features preservation of more than the property's worth is too onerous a restriction. In terms of the other three variances, they want to have the width of the right-of-way that is necessary so that emergency vehicles can access the property. In regard to the perimeter setbacks on the side yards, to him one of the greatest gauges of whether a variance is warranted is asking, "Whose ox is getting gored." Nobody's ox is getting gored here. In terms of the density, it is truly an arbitrary number that got adopted. The guiding plan talks about flexibility whether it is 28 or 32, it is not going to make any difference to the surrounding property owners or the interface of the public right-of-way.*

*He has done this many time and it is a little unfair in terms of their process and serious engagement in this application through work with neighbors, staff, review of plans, engagement of landscape architects, civil engineers and lawyers. It is a serious plan. He requests a tabling and will be back at the nearest opportunity and hopes during that time we can change minds to get a positive vote.*

*Mr. Robinson informed Mr. Hodge that he would welcome a phone call about this. He also does ask him to consider one thing, that our City's code is not arbitrary. Think about that and he looks forward to hearing from Mr. Hodge.*

*President Michael expressed her thanks to Sustainable Worthington and the staff and volunteers who have worked to make Moses Wright such a wonderful area. She recognizes the time and effort put in and has noticed how much honeysuckle has disappeared from that park. She stated that Ms. Dorothy brought up a good point about Rush Run even though it is owned by the City of Columbus within the City of Worthington. When looking at our current public places, she challenged volunteers to see where we are needing additional green forestry in our public plan. If we were to use City funds, it would have to be on public, not private lands. She is going to do what John Coleman did to her when she was on the Parks and Recreation Board and ask for them to put together some thoughts and ideas where the need is. It is easy to say something is needed, but the question is specifically where. It would be helpful to have some guidance from active community members that enjoy working in this area.*

**MOTION** Mr. Robinson made a motion to table Ordinance No. 42-2018. The motion was seconded by Mr. Smith.

**There being no additional comments, the motion carried unanimously by a voice vote.**

**Ordinance No. 43-2018** Accepting the Amounts and Rates as Determined by the Budget Commission and Authorizing the Necessary Tax Levies and Certifying Them to the County Auditor.

**The foregoing Ordinance Title was read.**

*Mr. Bartter detailed that this is an annual housekeeping ordinance required under Ohio Revised Code Section 5705.34 to accept the amounts and rates determined by the Budget Commission. The rates remain unchanged at 5 mills and is projected to generate \$3.2 million in collection year 2019. He requested a motion to make an amendment to this to insert the numbers as indicated in the packet and additionally to strike the section starting at "six-sevenths of the members and ending at concurring".*

**MOTION** Ms. Kowalczyk moved, Ms. Dorothy seconded a motion to insert the numbers as presented in the Amended Ordinance and to remove the phrase, "six-sevenths" in the "Now Therefore" section.

**There being no additional comments, the motion pass unanimously by a voice vote.**

*Ms. Dorothy asked for clarification about who all needs to do this. Mr. Bartter replied that everyone who collects property tax does this. Ms. Dorothy noted that while our tax rate is 5 mills, there are places in Central Ohio with varying tax rates and it appears Worthington is on the lower end. Mr. Bartter agreed.*

**The clerk called the roll on Ordinance No. 43-2018 (As Amended). The motion carried by the following vote:**

**Yes     5            Kowalczyk, Dorothy, Smith, Robinson, and Michael**

**No       0**

**Ordinance No. 43-2018 (As Amended) was thereupon declared duly passed and is recorded in full in the appropriate record book.**

**Ordinance No. 44-2018**                      To Amend Various Sections of Chapter 765  
"Tobacco Sales" of the Codified Ordinances of the  
City of Worthington.

**The foregoing Ordinance Title was read.**

*Mr. Greeson explained to members of Council that the Tobacco 21 ordinance is a public health initiative meant to make it more difficult for persons under the age 21 to purchase and therefore consume tobacco products. We need to do some clean-up of the previously adopted ordinance and Mr. Lindsey will overview those changes.*

*Mr. Lindsey stated that as Mr. Greeson indicated, this is a clean-up of the ordinance passed last year. Columbus Public Health who will be administering this ordinance for Worthington determined there were some additional important changes that they had not previously recommended to us, primarily for consistency with the ordinance passed by Columbus that they are already enforcing. Council will notice from the redline version included in the packet, many of the changes are related to definitions and terms. They also clarified that they would be conducting at least one inspection of the temporary licenses that were issued that was not originally required in the initial ordinance. The five-day period that was originally part of the licensing when it was submitted to the city, later become thirty days because of the administrative necessity of a period long enough to make it worthwhile.*

**There being no additional comments, the clerk called the roll on Ordinance No. 44-2018. The motion carried by the following vote:**

**Yes     5            Dorothy, Smith, Robinson, Kowalczyk, and Michael**

No 0

**Ordinance No. 44-2018 was thereupon declared duly passed and is recorded in full in the appropriate record book.**

**NEW LEGISLATION TO BE INTRODUCED**

**Resolution No. 49-2018** Support of the Ohio Department of Transportation (ODOT) State and United States Bike Routes.

**Introduced by Mr. Robinson.**

**MOTION** Mr. Smith made a motion to adopt Resolution No. 49-2018. The motion was seconded by Ms. Dorothy.

*Mr. Hurley discussed how staff was approached by the state coordinator for the State and United States Bike Routes system requesting resolutions of support from jurisdictions in order to designate bike routes around the state and county. The goal of this effort is to identify bike routes in each state to make connections across the United States. This project was initiated by the American Association of State Highway and Transportation Officials. It will serve as another planning tool for communities to show connections and viability for grant funding. In our review of the resolution before Council, the request is for a resolution of support only. We do not believe passage of the resolution commits us to any sort of construction projects or other investments at this time. The request was shared with the Bicycle and Pedestrian Advisory Board, they reviewed the proposal in-depth and made a few recommendations and it was ultimately recommended by a unanimous motion that the resolution be approved. He noted that the only route in this designation that goes through Worthington is the existing Olentangy Trail, it is the State Route 47.*

**There being no additional comments, the motion to adopt Resolution No. 49-2018 passed unanimously by a voice vote.**

**Resolution No. 50-2018** Authorizing the City Manager to Seek Financial Assistance from Federal Attributable Funds for the Project at Worthington Galena Road, Huntley Road and Wilson Bridge Road.

**Introduced by Ms. Kowalczyk.**

**MOTION** Mr. Robinson made a motion to adopt Resolution No. 50-2018. The motion was seconded by Mr. Smith.

*Mr. Greeson reported that this is one of many pieces of legislation that will be brought before Council about the Northeast Gateway Project.*

*Mr. Whited informed Council that this is for the Mid-Ohio Planning Commission asking for an update to Council's support for the Northeast Gateway Project based on changes that were made from the original 2012 application for funding through them. The application update has already been submitted, they require this resolution of support as a formality to indicate support of the project.*

**There being no additional comments, the motion to adopt Resolution No. 50-2018 passed unanimously by a voice vote.**

**Resolution No. 51-2018**

Adjusting the Annual Budget by Providing for a Transfer of Previously Appropriated Funds.

**Introduced by Ms. Dorothy.**

**MOTION**

Ms. Kowalczyk made a motion to adopt Resolution No. 51-2018. The motion was seconded by Mr. Robinson.

*Mr. Greeson explained this is typical of other transfers of funds, we have an area where there are funds available because of underspending and there are accounts that require additional funding because of our activities. These resolutions do not increase the overall appropriations or budget for the City, they move funds among accounts. The transfers here are for Police and Administration.*

**There being no additional comments, the motion to adopt Resolution No. 51-2018 passed unanimously by a voice vote.**

**REPORTS OF CITY OFFICIALS**

Policy Item(s)

- Permission to Bid - Northeast Gateway Project Railroad Crossing Improvements

*Mr. Whited remarked that this is associated with the Northeast Gateway Project and part of the Ohio Rail Development Commission's (ORDC) attempts to improve the safety of the railroad crossing at East Wilson Bridge Road. This will add some curbing, an island, and other features that will circumvent the ability for vehicular traffic to evade that crossing and skip the gates. It will be done prior to work done by the Ohio Rail Development Commission to install some lighting, automatic gates, and other things there that are vastly out of date. The ORDC will fully fund this project through a reimbursement. The project has been approved by the ORDC and one of the railroads, but not the other. He requested permission to bid, however there is not an estimate for when work would start.*

**MOTION**

Mr. Smith moved, Ms. Dorothy seconded a motion to give staff permission to bid curb improvements at Wilson Bridge Road and the Railroad Crossing for the Northeast Gateway Intersection Improvement Project.

*Ms. Dorothy expressed her appreciation to Mr. Whited for his work on the safety of this intersection and getting someone else to pay for it. She noted that there are many people who are concerned about the noise of the trains and would love to have quiet passageways, however that is not part of this project. Mr. Whited replied that is correct and appreciates the noise concerns. Ms. Dorothy indicated that there are many who would like quiet trains in the future and she expressed her support for looking into it.*

**There being no additional comments, the motion carried unanimously by a voice vote.**

- **Opposition to Proposed Small Cell Regulations**

*President Michael reviewed how this item is for looking into submitting a letter of opposition signed by the Council President for proposed regulations under consideration by the FCC related to the deployment of small cell technology. The FCC is essentially introducing information that would trump all the material and hard work that City staff, and various other cities have put in on coming up with compromise legislation in the State of Ohio regarding small cells. We have language in the Ohio Revised Code that has been approved by both the industry and the cities and we would really like for this not to completely be overturned by federal regulation.*

*Mr. Greeson expressed his belief that staff thinks this would be detrimental to the agreement reached with the State and industry and undermines our control of the local right-of-way.*

*Mr. Robinson thanked Ms. Stewart for working on this and he and other members of council strongly support her efforts. He asked if we explored ways to maximize whatever impact we may have through our singular letter in terms of joining a coalition or other such activities. Ms. Stewart replied that the National League of Cities has put out a call for cities across the county on this issue. The Mid-Ohio Regional Planning Commission has submitted a letter. Several cities are also sending letters. In addition to sending to the FCC, it has been suggested to also copy Congressional delegations. Mr. Robinson noted that it is election season and suggested soliciting position statements from various candidates. This might be a time they are interested in pleasing different constituencies.*

*President Michael mentioned that the Central Ohio Mayors and Managers Association has sent out a call for communities to have resolutions and letters sent out. Some of the initial materials were actually created by some of the other cities.*

*Ms. Kowalczyk asked for the “Cliff Notes” version of our main concerns. Ms. Stewart explained the main areas are looking at the shot clocks for how long we have to review applications once they are submitted for small cells. The FCC regulations shorten those over what we negotiated with the industry in Ohio. Likewise, there are different limits on applications fees and limits on fees that we can charge if they attach to our facilities. There are more limitations around our abilities to control and manage the aesthetics. Lindsay*

*Miller with ICE Miller advised that if the FCC still chooses to go forward with adopting this, they could exempt those states that already have negotiated with industry.*

*President Michael asked if we would be sending this only to our representatives in Congress or to all of the Ohio representatives. Mr. Greeson said that it could be distributed far and wide and President Michael agreed that would be good.*

**MOTION** Mr. Robinson moved, Mr. Smith seconded a motion authorizing the City Council President to submit a letter of opposition on behalf of the City of Worthington.

**There being no additional comments, the motion carried unanimously by a voice vote.**

*Mr. Greeson informed members that the Ohio Municipal League's conference will be held in October. He encouraged members to let him know if they are interested in attending as the Early Bird price ends October 1<sup>st</sup>.*

## **REPORT OF COUNCIL MEMBERS**

*Ms. Dorothy shared that the Cemetery Board met recently. They are still working on plans for the building recently acquired.*

## **EXECUTIVE SESSION**

**MOTION** Mr. Robinson moved, Mr. Smith seconded a motion to meet in Executive Session to discuss Land Acquisition, Appointments to Boards and Commissions, Collective Bargaining Negotiations, and Employee Compensation.

**The clerk called the roll on Executive Session. The motion carried by the following vote**

**Yes     5**     Dorothy, Kowalczyk, Robinson, Smith, and Michael

**No     0**

Council recessed at 9:35 P.M. from the Regular meeting session.

**MOTION** Ms. Dorothy moved, Ms. Kowalczyk seconded a motion to return to open session at 10:17 P.M.

## **ADJOURNMENT**

**MOTION** Mr. Smith immediately moved, and Mr. Robinson seconded a motion to adjourn.

**The motion carried unanimously by a voice vote.**

President Michael declared the meeting adjourned at 10:18 P.M.

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Assistant City Clerk

*APPROVED by the City Council, this  
1<sup>st</sup> day of October, 2018.*

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Council President





**STAFF MEMORANDUM**  
**City Council Meeting – October 1, 2018**

Date: September 20, 2018

To: Matthew H. Greeson, City Manager

From: David McCorkle, Economic Development Manager

Subject: **Resolution No. 52-2018 - ReCAP Award - DLZ Corporation (6121 Huntley Road)**

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**EXECUTIVE SUMMARY**

This Resolution approves a Re-Emergent Corridor Assistance Program (ReCAP) award in the amount of \$25,000 for DLZ Corporation, located at 6121 Huntley Road.

**RECOMMENDATION**

Approve as Presented

**BACKGROUND/DESCRIPTION**

The CIC met on September 14, 2018 and reviewed the proposed exterior improvements to 6121 Huntley Road. The CIC Board recommended approval of funding for the project, contingent upon the applicant's compliance with the Building & Planning Department.

The application submitted by DLZ Corporation was scored by both City staff and the CIC Board, receiving a final score of 75 points (out of 100 possible; a minimum score of 65 points is required).

Staff recommends that City Council approve \$25,000 in ReCAP assistance to DLZ Corporation for the property located at 6121 Huntley Road. Funds will be used to make improvements pursuant to the program's guidelines and procedures.

*ReCAP Initiative*

The City of Worthington launched a façade improvement grant / revolving loan fund (RLF) in May 2014 to induce private, commercial property owners and tenants to make exterior-focused improvements. Worthington calls this initiative the Re-emergent Corridor Assistance Program ("ReCAP"). In its fifth year, the program is focused on improving properties located along Huntley Road, Proprietors Road, and connecting portions of Schrock Road and Worthington-Galena Road (collectively, the "Corridor").

The Corridor is comprised of older properties which lag behind comparable properties elsewhere in the Central Ohio region, and many of the Corridor's properties are marked by declining investment and depressed leasing rates.

Reimbursable grants and no-cost financing are available under ReCAP to fund commercial building exterior enhancements. ReCAP provides half of the total award amount up-front as a loan payment to awardees, with the remaining half being a reimbursable grant that is received upon proof of invoices and payments. This assistance is to partially fund well-designed exteriors that enhance the design integrity of the Corridor and secure participating buildings against further devaluation and disinvestment.

#### *Proposed Project*

Application was made by DLZ Corporation to make improvements to the property at 6121 Huntley Road. The work proposed by the applicant consists of repairing the stucco façade, repainting the building, adding new signage, installing two new bio-retentions, installing trees, shrubs, and perennials, and adding topsoil, regrading, rock removal, and seeding.

The proposed timeline is 12 weeks. The lowest of the three submitted bids was \$63,319.

The Neighborhood Design Center ("NDC") provided design and application assistance for this project. For 2018, NDC is on engagement with the City to provide no-cost (to the applicant) design and planning services to ReCAP projects.

#### **FINANCIAL IMPLICATIONS/FUNDING SOURCES** (if applicable)

The 2018 Operating Budget includes funding for the ReCAP Program in the Economic Development Fund. The budgeted amount is sufficient to cover the cost of the application.

#### **ATTACHMENTS**

Resolution No. 52-2018  
Application for Funding  
Grant/Loan Agreement

RESOLUTION NO. 52-2018

Authorizing the Award of Re-emergent Corridor Assistance Program Funds to Help Improve Facility Exterior Facade and Streetscape Along Certain of the City's Commercial Corridors (6121 Huntley Road).

WHEREAS, in May 2014 the City launched its Re-emergent Corridor Assistance Program, or ReCAP, as an exterior façade and streetscape enhancement initiative to induce property owners and tenants to re-invest in their commercial properties in Worthington; and,

WHEREAS, those commercial properties eligible for ReCAP assistance during program year 2018 are located in the commercial corridor comprised by Huntley Road, Proprietors Road, and the connecting portions of Schrock Road and Worthington-Galena Road, respectively; and,

WHEREAS, the City received one application for program assistance from DLZ Corporation, to make exterior improvements to commercial real property the applicant owns at 6121 Huntley Road, City of Worthington, Franklin County (the "Property"); and,

WHEREAS, as specified in the ReCAP Policy & Procedures, City staff prepared the application materials for review by the Worthington Community Improvement Corporation ("CIC") at its regular meeting on September 14, 2018; and,

WHEREAS, the CIC Board reviewed the applications and recommended approval; and,

WHEREAS, City Council is desirous of encouraging the exterior renovation and streetscape improvements to be made by DLZ Corporation as set forth in its applications for ReCAP assistance, which are attached hereto and incorporated herein as EXHIBIT A.

NOW THEREFORE, BE IT RESOLVED by the Council of the Municipality of Worthington, County of Franklin, State of Ohio:

SECTION 1. That the Council of the City of Worthington does hereby approve an award up to a maximum of \$25,000 in assistance under the Re-emergent Corridor Assistance Program for 6121 Huntley Road, to DLZ Corporation, for the work described in EXHIBIT A. Said assistance is structured in the form of one-half the amount in grant funds and one-half the amount in loaned funds to encourage investments in, and improvements to, the Property.

SECTION 2. These awards of ReCAP assistance shall be in accordance with and subject to the requirements set forth in the ReCAP Policy & Procedures, including the use of City funds for only those Eligible Improvement Costs as identified therein.

RESOLUTION NO. 52-2018

SECTION 3. The City Manager, the Director of Finance and the Director of Law, and any other City official, as appropriate, are each authorized and directed to sign the necessary documents to evidence the ReCAP assistance approved herein, and are authorized and directed to sign any other documents, instruments or certificates and to take such actions as are necessary or appropriate to consummate or implement the transaction described in or contemplated by this Resolution.

SECTION 4. That the Clerk of Council be instructed to record this Resolution in the appropriate record book.

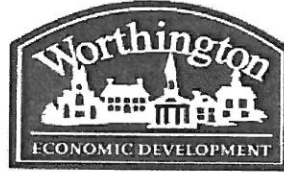
Adopted \_\_\_\_\_

\_\_\_\_\_  
President of Council

Attest:

\_\_\_\_\_  
Clerk of Council

## EXHIBIT A



**Re-emergent Corridor Assistance Program (ReCAP)  
Application for Assistance (2017)**

Those interested in receiving ReCAP financing for exterior improvements must complete this form and submit to the City of Worthington. The City will review the information to determine whether an award of ReCAP assistance is approved for the described project.

Applicant Information	
<b>Applicant Name</b>	DLZ CORPORATION
<b>Applicant's Mailing Address</b>	6121 HUNTLEY ROAD
<b>Contact Name &amp; Title</b>	Ram Rajadhyaksha
<b>Contact Email</b>	ramr@dlz.com
<b>Contact Phone No.</b>	(614) 987-0286
<b>Project Site Address</b>	Is this site: <input checked="" type="checkbox"/> Purchased <input type="checkbox"/> Leased (lease ends:     /     /     )
<b>Applicant's Federal Identification Number (FEIN)</b>	_____ (attach sheet if additional FEINs)
<b>Describe Applicant's Commitment to and Involvement in the Worthington Community</b>	DLZ is a multidisciplinary civil and architectural engineering firm with world headquarters in Worthington Ohio. We have owned the 6121 and 6035 Huntley Road buildings since 1989 with approximately 150 employees on-site and \$10M in local payroll wages. DLZ has also provided civil engineering services to the City of Worthington in the past 5 years.
<b>Attach Copy of Applicant's Recent Letter of Credit or Loan Commitment from a Banking Institution</b>	If the Applicant cannot show recent correspondence from a Banking Institution, Applicant can supply a completed Personal Financial Statement (SBA Form 413).
Property Owner Information	

<b>Property Owner Name*</b>	DLZ CORPORATION
<b>Email</b>	ramr@dlz.com
<b>Phone No.</b>	(614) 987 0286

*\* If Applicant is NOT the Property Owner, then Property Owner must supply notarized acknowledgement.*


**As the owner in fee simple of the real property at the Project Site Address, I hereby acknowledge and approve of the Applicant submitting this request for City of Worthington ReCAP assistance to improve said property.**

**PROPERTY OWNER**

R. V. Ryan

STATE OF OHIO )  
 ) ss.  
COUNTY OF Franklin )

Before me, a Notary Public, in and for said county, personally appeared the above-named Property Owner who acknowledged the signing hereof to be his/her voluntary act for the purposes therein mentioned.



Dorothy Park  
Notary Public, State of Ohio  
My Commission Expires 07-21-20

Signed: [Signature]  
Notary Public, State of Ohio

My Commission expires: 7-21-20


<b>In the Space Provided, Describe the Project Site's Current Conditions, including Building &amp; Site Improvement Needs</b>	<b>Project Site – Current Conditions</b> (Attach additional sheets if necessary)
	<p>DLZ has invested over \$1.5M in the property since 2014, including a major renovation at \$1.2M (2014), \$20k for new trees (2015), \$60k for a new asphalt lab next to 6035 Huntley (2018), \$60k in minor parking lot improvements (2017), and \$75k for window replacements (2018).</p> <p>The building needs to be painted. The exterior facade is cracking, the parking lot needs a complete reconstruction, and we plan decorative white fencing and landscaping.</p>

**Attach Current, As-is Photographs of the Project Site**

**Project Scope of Work & Applicant Experience**

<b>Estimated Total Exterior Project Costs</b>	\$ for grant: \$63,319, total planned: \$263,319 (estimated)
<b>In the Space Provided, Describe the Exterior Improvement Project's Scope of Work</b>	<p>(Attach additional sheets if necessary)</p> <p>For our grant application, we plan to complete the following projects:</p> <ol style="list-style-type: none"> <li>1. Facade repair and painting of the building - lowest bid was \$27,521 from Martin Painting &amp; Coating. We plan to contact Neighborhood Design Center for recommendations on exact colors.</li> <li>2. New signage on the front building facade. The signage was developed in collaboration with Neighborhood Design Center and DaNite. The current bid is \$11,535.13 however we are changing the size and position of the sign. In addition to this request, you will receive a permit application from the sign vendor.</li> <li>3. Landscaping - lowest bid was \$24,263.75 from Davey Tree. The landscaping will accompany a total parking lot reconstruction.</li> </ol>
<b>In the Space Provided, Describe the Applicant's Experience in Undertaking / Managing Similar Projects</b>	<p>In 2018 DLZ has completed a \$75,000 renovation of all windows for the 6121 building. We performed energy modeling and specified low-emissivity glass for a 10% reduction in HVAC loads.</p> <p>We have also completed plans and specifications for the parking lot renovation, estimated to cost \$200,000. Project is currently out to bid with multiple contractors.</p>
<b>Attach Renderings, Illustrations and/or Drawings for the Exterior Improvement Project</b>	

See attachments A, B

Project Work Bids	
<b>Attach Three (3) Written Bids for All Exterior Improvement Work to be Performed under the Project</b>	<p>Applicant must supply at least three (3) written bids for the work to be performed. Applicants must ensure that all bids are based on the <u>same work</u> (example: if Bid 1 is for tuckpointing, window replacement, and flashing, Bids 2 and 3 must also be for same scope of services)</p> <p><b>NOTE: Although ReCAP awards are calculated only per the lowest bid, Applicants are free to accept higher bids.</b></p>
Contractor Selected & Construction Schedule	
<b>Contractor Selected</b>	Name: <u>See attachment B - bids</u>
<b>Construction Schedule</b>	<p>Approximate date work to begin: _____ Approximate date work to be completed: _____</p> <p>for facade repair and painting: _____</p> <p><u>9 / 30 / 2018</u> <u>12 / 31 / 2018</u></p> <p>* Davey Tree landscaping to be done in 2019.</p> <p>In all cases, ReCAP-assisted construction must be completed within 24 months of making application</p>
Compliance with City Laws & Regulations	
Please verify the following by providing a check mark next to the ones that are true.	
<input checked="" type="checkbox"/> Property taxes are up to date on this property.	
<input checked="" type="checkbox"/> Applicant is in full compliance with City income tax obligations.	
<input checked="" type="checkbox"/> Property is fully compliant with the City's building & zoning code; There are no known violations.	
Applicant Signature	
As an authorized representative of the Applicant, I hereby submit this Application. I understand that this Application, once submitted, in no way constitutes a commitment of funds by the City of Worthington.	
I hereby represent and certify that I have reviewed the information contained in this Application, and the foregoing and attached information, to the best of my knowledge and belief, is true, complete and accurately describes the proposed project for which the City's ReCAP assistance is being sought.	
I am aware that Ohio law sets forth criminal penalties for falsification on applications for economic development assistance (see Ohio Revised Code §2921.13(A)(4)).	
 Applicant Signature	<u>Ram Rajadhyaksha</u> Printed Name & Title
	<u>July 31 2018</u> Date

Applications are to be submitted to the following:  
**City of Worthington, Economic Development**  
**6550 North High Street**  
**Worthington, Ohio 43085**



## RE-EMERGENT CORRIDOR FINANCIAL ASSISTANCE AGREEMENT

THIS RE-EMERGENT CORRIDOR FINANCIAL ASSISTANCE AGREEMENT (the "**Agreement**") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018 (the "**Effective Date**"), by and between the City of Worthington, an Ohio municipal corporation (the "**City**"), and DLZ Corporation, a Delaware corporation (the "**Company**"). The City and the Company are collectively referred to herein as the "**Parties**".

### RECITALS

WHEREAS, pursuant to Resolution No. 06-2014, adopted March 17, 2014, and Resolution No. 32-2015, adopted June 15, 2015 (the "**Approval Legislation**"), and consistent with its goal of encouraging voluntary investment along certain of its commercial corridors, the City has launched the Re-Emergent Corridor Assistance Program, or ReCAP, as an exterior façade and streetscape enhancement initiative to induce property owners and tenants to re-invest in their commercial properties (the "**Program**"); and

WHEREAS, as authorized in Article VIII, Section 13 of the Ohio Constitution and in accordance with the guidelines established under the Program, the City has offered to provide the Company with financial assistance to encourage the Company to upgrade the exterior appearance of the commercial property it owns or leases within the City, in accordance with any review and approval of such appearance alterations by the Worthington Municipal Planning Commission (the "**Project**"), as more fully described and set forth in EXHIBIT A, Scope of Work, attached hereto and incorporated herein; and

WHEREAS, the Company has accepted the City's offer to provide financial assistance and has agreed to enter into this Agreement, which sets forth the Company's respective rights and obligations concerning the payment of such financial assistance.

NOW THEREFORE, the Parties covenant, agree and obligate themselves as follows:

Section 1. Terms of the Grant. The City shall pay the Company a Program grant in the amount of Twelve Thousand Five Hundred dollars (\$12,500.00) (the "**Grant**"), which the Company shall use in connection with the Project to occur at 6121 Huntley Road in the City of Worthington, Franklin County (the "**Premises**"). Payment of the Grant under this Section shall be reimbursable to the Company in one lump sum after the eligible project costs have occurred and been paid for, provided that this Agreement has been fully executed by both Parties.

Section 2. Terms of the Loan. The City shall remit to the Company a Program loan in the amount of Twelve Thousand Five Hundred dollars (\$12,500.00), to be repaid by the Company to the City at a rate of zero percent (0%) per annum for three (3) years from the Effective Date of this Agreement (the "**Loan**"). The obligations of the Company to repay the Loan shall be evidenced by a promissory note to the order of the City substantially in the form of EXHIBIT B, Cognovit Promissory Note, attached hereto and fully incorporated herein (the "**Note**"). The Loan shall be repaid by the Company in quarterly installments according to the payment schedule set

forth in the Note. Proceeds of the Loan shall be remitted by the City to the Company upon the execution of this Agreement and the Note.

Section 3. Use of Funds. The Company will use the Grant and the Loan (collectively, the “**Assistance**”) to complete the Project as described in the Scope of Work and as set forth in the Company’s application for assistance under the Program dated August 8, 2018, which said application is incorporated herein and referenced hereto as part of this Agreement (the “**Application**”). The Company shall use the Assistance solely in connection with eligible expenses incurred under the Project in making exterior renovation and rehabilitation improvements to the Premises. By accepting the Assistance herein provided, the Company agrees to meet the Assistance Objectives, defined below in Section 5. All improvements to the Premises shall be made in accordance with any approvals for the Project by the Worthington Planning Commission and permits and inspections as may be required by the City of Worthington Planning & Building Department.

Section 4. City's Obligation to Make Payments Not Debt: Payments Limited to Non-tax Revenues. Notwithstanding anything to the contrary herein, the obligations of the City pursuant to this Agreement shall not be a general obligation debt or bonded indebtedness, or a pledge of the general credit or taxes levied by the City, and the Company shall have no right to have excises or taxes levied by the City, the State or any other political subdivision of the State for the performance of any obligations of the City herein. Consistent with Section 13 of Article VIII, Ohio Constitution, any payments required to be made by the City pursuant to this Section 4 shall be payable solely from the City's non-tax revenues. Further, the obligation of the City to make the payments pursuant to this Agreement shall be in accordance with the Approval Legislation and subject to certification by the Director of Finance of the City as to the availability of such non-tax revenues.

Section 5. Assistance Objectives. In consideration of the City’s agreement to provide Assistance to the Company, the Company agrees to meet and maintain the following objectives (the “**Assistance Objectives**”):

(a) The Premises must be located within the ReCAP Program Area as defined under the Program pursuant to the Approval Legislation; and

(b) The Project must involve improvements only to that real property deemed commercial for municipal planning, zoning and taxing purposes, located within said ReCAP Program Area; and

(c) The Company must be in full compliance with City income tax and real estate tax obligations on the Premises; and

(d) All work under the Project must be completed within twenty-four (24) months of the Effective Date, with all build-out work to be performed by licensed contractors which are bonded and insured for the Project; and

(e) All work under the Project must be in compliance with applicable City building permit processes and board and commission approvals; and

(f) The Company cannot be in violation of any City rules, regulations or ordinances during the Term of this Agreement; and

(g) The Assistance provided under this Agreement must be solely directed towards those eligible improvement costs to be incurred by the Company, which such eligible costs do not include interior improvements of any kind made to the Premises.

Section 6. Term of the Agreement. The term of this Agreement shall commence on the Effective Date and end on the earlier of (i) thirty-six (36) months after such Effective Date or (ii) the date on which the City issues to the Company a notice of final close-out under the Program, which occurs, upon request by the Company, after the issuance by the City of any Certificates of Occupancy regarding the Project and the full repayment of the Loan by the Company

Section 7. Events of Default. At any time during the Term of this Agreement, and solely at the discretion of the City, should the City determine the Company is not in compliance with the terms of the Loan set forth under Section 2 and/or the use of funds set further under Section 3 of this Agreement, including the timely repayment of the Loan, then the City shall provide Notice of Default to the Company pursuant to Section 9 demanding strict compliance therewith. If the Company fails to take necessary action during the notice period herein to remain in compliance, then the City shall immediately call the Loan and seek any remedy to which it is entitled under the Note executed as part of this Agreement, including the repayment of any Loan amount due and outstanding.

Section 8. Grant Clawback. Notwithstanding any other provision to the contrary under this Agreement, and in addition to any Loan amount due under Section 7, in the event that the City determines at any time during the Term that the Company has not materially satisfied the Assistance Objectives set forth under Section 5, then the Company shall repay any and all Grant payments previously remitted by the City to the Company under this Agreement. Repayment of the Grant under this Section shall not affect any obligation by the Company under this Agreement to repay the Loan, and likewise any repayment of the Loan hereunder shall not affect the Company's obligation to repay the Grant pursuant to this Section. Any repayment of the Grant by the Company shall be paid within sixty (60) days following the date the City notifies the Company of its intention to take action under this Section. The Company shall have the opportunity to cure or otherwise take any necessary corrective action during such period to remain in compliance with the terms of the Grant under this Agreement.

Section 9. Notice of Default. Pursuant to Section 7, should the City determine that the Company is not in compliance with the terms of the Loan, then the City shall provide written notice to the Company, addressed to and sent via the notice provisions of Section 11 below (the "**Notice of Default**"). The Notice of Default shall state clearly the reason(s) for which the City determines the Company to be out of compliance. The Company shall have ten (10) days from the date it received the Notice of Default to cure or otherwise take the necessary corrective action to remain in compliance with the terms of the Loan under this Agreement.

Section 10. Indemnification of the City. The Company shall indemnify, defend and hold harmless the City from and against all claims, losses, liabilities, damages, costs, and expenses, including reasonable attorneys' fees, costs and expenses, arising from the City's remittance of monies under the Program.

Section 11. Miscellaneous.

(a) Notices. Except as otherwise specifically set forth in this Agreement, all notices, demands, requests, consents or approvals given, required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given if actually received or if hand-delivered or sent by a recognized, overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the other party at the address set forth in this Agreement or any addendum to or counterpart of this Agreement, or to such other address as the recipient shall have previously notified the sender of in writing, and shall be deemed received upon actual receipt, unless sent by certified mail, in which event such notice shall be deemed to have been received when the return receipt is signed or refused. For purposes of this agreement, Notices shall be addressed to:

(i) If to the City:

The City of Worthington  
Attention: Economic Development Manager  
6550 North High Street  
P.O. Box 480  
Worthington, Ohio 43085

with a copy to:

Director of Law  
370 Highland Avenue  
Worthington, Ohio 43085

(ii) If to the Company:

DLZ Corporation  
Attention: Ram Rajadhyaksha  
6121 Huntley Rd.  
Columbus, OH 43229

The Parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

(b) Extent of Provisions: Personal Liability. All rights, remedies, representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be

effective to the extent authorized and permitted by applicable law. No representation, warranty, covenant, agreement, obligation, or stipulation contained in this Agreement shall be deemed to constitute a representation, warranty, covenant, agreement, obligation or stipulation of any present or future official, member, officer, agent or employee of the City. No official executing or approving the City's participation in this Agreement shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the issuance thereof. The agent and/or representative executing or approving the Company's participation under this Agreement, to the extent set forth under Section 2 and EXHIBIT B of this Agreement, hereby acknowledges he or she may be liable personally or otherwise subject to any personal liability by reason of the issuance thereof.

(c) Successors. This Agreement shall not be binding upon nor inure to the benefit of the Company's successors and assigns unless with the prior written consent of the City, which consent shall not be unreasonably withheld.

(d) Amendments. This Agreement may only be amended by a written instrument executed by both Parties.

(e) Executed Counterparts. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same agreement. It shall not be necessary in proving this Agreement to produce or account for more than one of those counterparts.

(f) Severability. In case any section or provision of this Agreement, or any covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, or any application thereof, is held to be illegal or invalid for any reason:

(i) that illegality or invalidity shall not affect the remainder hereof or thereof, any other section or provision hereof, or any other covenant, agreement, obligation or action, or part thereof, made, assumed, entered into, or taken, all of which shall be construed and enforced as if the illegal or invalid portion were not contained herein or therein;

(ii) the illegality or invalidity of any application hereof or thereof shall not affect any legal and valid application hereof or thereof; and

(iii) each section, provision, covenant, agreement, obligation or action, or part thereof shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the fullest extent permitted by law.

(g) Captions. The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of the Agreement.

(h) Governing Law and Choice of Forum. This Agreement shall be governed by and constructed in accordance with the laws of the State of Ohio or applicable federal law. All claims,

counterclaims, disputes and other matters in question between the City, its agents and employees, and the Company, its employees and agents, arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within Franklin County, Ohio.

(i) Further Assurances. The Company shall, upon request of the City, duly execute and deliver to the City such further instruments, and do and cause to be done such further acts, as may be necessary or proper in the opinion of the City to carry out the provisions and purposes of this Agreement.

IN WITNESS WHEREOF, the City and the Company have caused this Agreement to be executed in their respective names by their duly authorized representatives, all as of the Effective Date.

DLZ CORPORATION

By \_\_\_\_\_  
(Name) (Title)

CITY OF WORTHINGTON

By \_\_\_\_\_  
Matthew H. Greeson, City Manager

Approved as to form for the City:

\_\_\_\_\_  
Tom Lindsey, Law Director

## **EXHIBIT A**

### **SCOPE OF WORK**

The Company seeks Assistance from the City under the Program to undertake the Project at 6121 Huntley Road. The Premises has been owned by DLZ Corporation since 1989.

The Project consists of repairing the stucco façade, repainting the building, adding new signage, installing two new bio-retentions, installing trees, shrubs, and perennials, and adding topsoil, regrading, rock removal, and seeding.

The Company estimates that the work will be completed by December 31, 2018, with said completion in full accordance and compliance with any approval action(s) by the Worthington Municipal Planning Commission and permits and inspections as may be required by the City of Worthington Planning & Building Department.

**EXHIBIT B**

**COGNOVIT PROMISSORY NOTE**

\$12,500.00

Worthington, Ohio  
\_\_\_\_\_, 2018

FOR VALUE RECEIVED, the undersigned DLZ Corporation (the “**Borrower**”), a Delaware corporation, promises to pay to the order of the City of Worthington (the “**City**”), at 6550 North High Street, Worthington, Ohio 43085, Attn: Finance Department, or at such other place as the holder hereof may, from time to time, in writing designate, the principal sum of Twelve Thousand Five Hundred dollars (\$12,500.00) (the “**Note Total**”), without interest, as further described in that certain Re-Emergent Corridor Financial Assistance Agreement (the “**ReCAP Agreement**”) between the Borrower and the City of even date herewith. The principal of this Note shall be paid in twelve (12) quarterly installments due and payable as set forth below.

Commencing on April 1, 2019, a payment in the amount of \$1,041.67 shall be made, and shall continue to be made on the first day of each calendar quarter thereafter in \$1,041.67 increments each such quarter until paid in full. The Note Total shall be paid in full on or before January 1, 2022.

This Note does not of itself constitute a commitment by the City to make any disbursement of the Loan (as defined in the ReCAP Agreement) to the Borrower. The conditions for making such a disbursement are set forth in the ReCAP Agreement. The disbursements made by the City to the Borrower shall not exceed the face amount of this Note and the total amount of such disbursement is limited by and subject to the conditions for making disbursement of the Loan as set forth in the ReCAP Agreement.

The indebtedness evidenced hereby may be prepaid in whole or in part at any time without penalty. In any event, all payments and prepayments received by the City shall be in lawful money of the United States and credited as of the time received by the City.

The covenants, conditions and agreements contained in the ReCAP Agreement are hereby made a part of this Note.

In any event of any default in making payment hereunder, then the whole or any part of the unpaid indebtedness evidenced hereby shall, at once or at any time thereafter, at the option of the holder or holders hereof, become due and payable without notice or demand therefor, the same being expressly waived. A failure of the holder hereof to insist upon strict compliance with the terms hereof or to assert any right hereunder shall not be a waiver of any default and shall not be deemed to constitute a modification of the terms hereof or to establish any claim or defense.

No delay or omission on the part of the holder in exercising any right hereunder shall operate as a waiver of such right or of any other right under this Note. A waiver on any one occasion shall not



be construed as a bar to or a waiver of any such right and/or remedy on any future occasion. The Borrower does hereby expressly waive presentment for payment, notice of dishonor, protest and notice of protest.

The Borrower agrees that the local laws of the State of Ohio shall govern its rights and duties hereunder and the construction and effect hereof. However, if any provision hereof is or becomes invalid or unenforceable under any law of mandatory application, such provision will be deemed severed and omitted herefrom, the remaining portions hereof to remain in full force and effect as written.

Any action, suit or proceeding in respect of or arising from or out of this Note, its making, validity or performance, shall be prosecuted as to all parties at Franklin County, Columbus, Ohio.

If this Note is placed in an attorney's hands for collection, or collected by suit or through bankruptcy or probate, or any other court, either before or after maturity, there shall be paid to the holder of this Note reasonable attorney fees, costs and other expenses incurred by the holder in enforcing the terms of this Note.

The undersigned, and each of the undersigned if more than one, authorizes any attorney at law to appear in such court, after the indebtedness evidenced hereby, or any part thereof, becomes due and waive the issuance and service of process and confess judgment against the undersigned in favor of the holder of this Note, for the amount then appearing due, together with costs of suit and, thereupon, to release all errors and waive all rights of appeal and stay of execution.

IN WITNESS WHEREOF, the undersigned has executed this Note as of the day and year first above written at \_\_\_\_\_, Ohio.

**WARNING -- BY SIGNING THIS PAPER, YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME, A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE, AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON HIS PART TO COMPLY WITH THE AGREEMENT OR ANY OTHER CAUSE.**

DLZ CORPORATION

By \_\_\_\_\_  
Its \_\_\_\_\_



**STAFF MEMORANDUM**  
**City Council Meeting – October 1, 2018**

Date: September 25, 2018

To: Matthew H. Greeson

From: D. Kay Thress, City Clerk

Subject: **Resolution No. 53-2018 - Right of Way Permit Renewal - Wide Open West Ohio, LLC**

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**EXECUTIVE SUMMARY**

This Resolution approves a Telecommunications and Utilities Permit agreement for Wide Open West Ohio to utilize the City's rights of way.

**RECOMMENDATION**

Introduce and Approve as Presented

**BACKGROUND/DESCRIPTION**

Section 949 of the City's Codified Ordinances requires that persons desiring to utilize the City's Rights of Way to provide public utility and/or telecommunications services, other than cable television service, obtain a Telecommunications and Utility Permit. The City has received an application from Wide Open West Ohio for renewal of its permit. This Resolution authorizes the City Manager to sign the Telecommunications and Utility Permit for the use of the Rights of Way in Worthington. The permit is for three years.

**FINANCIAL IMPLICATIONS/FUNDING SOURCES (if applicable)**

The City charges an annual fee of \$1,000 for entities that utilize less than 30 miles of right of way.

**ATTACHMENTS**

Resolution No. 53-2018  
Permit agreement

RESOLUTION NO. 53-2018

Approving an Agreement and Permit for and between Wide Open West Ohio, LLC, a Delaware Limited Liability Company, to Operate and Maintain a Telecommunications System Within the City of Worthington Pursuant to and Subject to the Provisions of Chapter 949 of the Codified Ordinances of the City of Worthington.

WHEREAS, Wide Open West Ohio, LLC, a Delaware Limited Liability Company, has requested authority to provide telecommunications services in the City of Worthington; and,

WHEREAS, the City of Worthington has enacted a comprehensive Right-of-Way Ordinance, Chapter 949 of the Codified Ordinances of the City of Worthington; and,

WHEREAS, City Council found the technical ability, and plan for services of Wide Open West Ohio, LLC acceptable; and,

WHEREAS, Wide Open West Ohio has acquired Bluemile Inc, which has facilities within the community under a permit initially approved in 2011; and,

WHEREAS, the authority is nonexclusive; and,

WHEREAS, Wide Open West Ohio, LLC has certified that the company meets the criteria of Section 949.05 of the Codified Ordinances of the City of Worthington for the issuance of a permit;

NOW, THEREFORE, BE IT RESOLVED by the Council of the Municipality of Worthington, County of Franklin, State of Ohio:

SECTION 1. That pursuant to Chapter 949 of the Codified Ordinances of the City of Worthington, an agreement between the City of Worthington and Wide Open West Ohio, LLC, a Delaware Limited Liability Company as attached hereto and made a part hereof is hereby authorized and approved and the City Manager is hereby authorized and directed to execute said agreement on behalf of the City, upon approval thereof by the Director of Law.

SECTION 2. That the Clerk of Council be and hereby is instructed to record this Resolution in the appropriate record book.

Adopted \_\_\_\_\_

\_\_\_\_\_  
President of Council

Attest:

\_\_\_\_\_  
Clerk of Council

**TELECOMMUNICATIONS AND UTILITY PERMIT FOR THE USE OF PUBLIC  
RIGHTS-OF-WAY WITHIN THE CITY OF WORTHINGTON, OHIO**

This Agreement is executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between Wide Open West Ohio, LLC, a Delaware limited liability company, ("Company") and the City of Worthington, Ohio, an Ohio municipal corporation (the "City") pursuant to Resolution No. \_\_\_\_\_ adopted by the Worthington City Council on \_\_\_\_\_, 20\_\_.

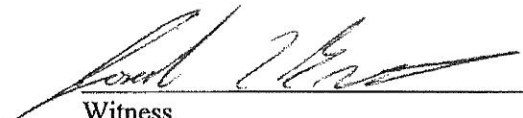
Now, therefore, in consideration of the foregoing and of the covenants, promises and conditions hereinafter set forth it is hereby agreed as follows:

- I. That the Company, a limited liability company, organized under the laws of the State of Delaware, its successors and assigns, is hereby granted the non-exclusive right, privilege and authority in accordance with the provisions of Chapter 949 of the Codified Ordinances of the City to acquire, construct, maintain and operate a telecommunications system and/or utility in the City in and under, above, across and along the streets, alleys, thoroughfares, public rights-of-way, public property and easements as the same now exist or may hereafter be laid out in the City, with minimum interference with the proper use of same, for the provision of all competitive telecommunications services as authorized by the Public Utilities Commission of Ohio.
- II. The Company shall construct and operate the telecommunications and/or utility system in accordance with all laws, ordinances, construction standards, governmental requirements, FCC technical standards and any other standards incorporated by reference. Nothing in this Agreement permits the Company to provide any other utility services or cable television services.
- III. The Company shall comply with the applicable requirements of Chapter 949 of the City Codified Ordinances.
- IV. The Company shall pay the annual permit fee as determined by City Codified Ordinances Section 949.07.
- V. The Company agrees that all contractors and subcontractors proposed for work on construction, installation, operation, maintenance and repair of the system shall be properly licensed under the laws of the state of Ohio and all City ordinances.
- VI. Subject to the final requirements of this Section VI, in those areas where telephone and electric services are provided by underground facilities, the Company shall place all new facilities underground. In all other areas, the Company agrees to use its Best Efforts (as defined in Chapter 949 of the City Codified Ordinances) to place all facilities in the City right-of-way underground except for equipment which is customarily placed on or above the ground in conjunction with underground transmission facilities. In addition, where the City Manager or his designee determine that such transmission facilities should not be located underground, the City Manager shall have the authority to relieve the Company of the requirement to do so. In making such a determination, the City Manager may take into account unusual circumstances or physical characteristics including but not limited to the existence of underground facilities which might interfere with the operations of the Company, topographical features or use requirements which may interfere with existing facility locations. The City Manager may also relieve the Company of the requirement to locate transmission facilities underground when to do so in a particular circumstance

would not be in the best interest of the City. The installation of above-ground locator wire markers is prohibited.

- VII. The rights, privileges and authority hereby granted shall not be effective prior to acceptance of this Agreement by the Company and the City and shall terminate three years from the date of acceptance.
- VIII. The Company shall, at its sole cost and expense, fully indemnify, defend and hold harmless the City, its officers, public officials, boards and commissions, agents and employees from and against any and all lawsuits, claims, causes of action, actions, liability, and judgments for injury or damages in connection with this permit, the Company system, and construction, installation, maintenance, and repair thereof.
- IX. Whenever in this Agreement the City or Company is referred to, such reference shall be deemed to include the respective successor or assign of either, and all rights, privileges, and obligations herein contained shall bind and inure to the benefit of such respective successor or assign, in which the predecessor of such successor or assign is divested of all such rights, privileges, or obligations, whether so expressed or not.
- X. The terms and provisions of this Agreement are joint and several, and the invalidity of any part shall not affect the validity of the Agreement.
- XI. If this permit involves the installation of small cell facilities or wireless support structures in the right of way, then the Company shall also comply with the applicable requirements of Chapter 955 of the City Codified Ordinances. In the case of any conflict between the requirements of Chapter 955 and Chapter 949 of the City Codified Ordinances, the provisions of Chapter 955 shall control.

  
Witness

  
Witness

WIDE OPEN WEST OHIO, LLC

By: 

Name: Tyler Zvolanek

Title: Director, Operations

CITY OF WORTHINGTON

\_\_\_\_\_  
Witness

By: \_\_\_\_\_

Name: \_\_\_\_\_

\_\_\_\_\_  
Witness

Title: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Law Director, City of Worthington



**STAFF MEMORANDUM**  
**City Council Meeting – October 1, 2018**

Date: September 25, 2018

To: Matthew H. Greeson

From: D. Kay Thress, City Clerk

Subject: **Resolution No. 54-2018 - Right of Way Permit Renewal - XO Communications Services, LLC**

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**EXECUTIVE SUMMARY**

This Resolution approves a Telecommunications and Utilities Permit agreement for XO Communications Services to utilize the City's rights of way.

**RECOMMENDATION**

Introduce and Approve as Presented

**BACKGROUND/DESCRIPTION**

Section 949 of the City's Codified Ordinances requires that persons desiring to utilize the City's Rights of Way to provide public utility and/or telecommunications services, other than cable television service, obtain a Telecommunication and Utility Permit. The City has received an application from XO Communications Services for renewal of its permit. This Resolution authorizes the City Manager to sign the Telecommunications and Utility Permit for the use of the Rights of Way in Worthington. The permit is for three years.

**FINANCIAL IMPLICATIONS/FUNDING SOURCES (if applicable)**

The City charges an annual fee of \$1,000 for entities that utilize less than 30 miles of right of way.

**ATTACHMENTS**

Resolution No. 54-2018  
Permit Agreement

RESOLUTION NO. 54-2018

Approving an Agreement and Permit for and between XO Communications Services, LLC, a Delaware Limited Liability Company, to Operate and Maintain a Telecommunications System Within the City of Worthington Pursuant to and Subject to the Provisions of Chapter 949 of the Codified Ordinances of the City of Worthington.

WHEREAS, XO Communications Services, LLC, a Delaware Limited Liability Company, has requested authority to provide telecommunications services in the City of Worthington; and,

WHEREAS, the City of Worthington has enacted a comprehensive Right-of-Way Ordinance, Chapter 949 of the Codified Ordinances of the City of Worthington; and,

WHEREAS, City Council found the technical ability, and plan for services of XO Communications Services, LLC acceptable; and,

WHEREAS, XO Communications Services, LLC, has facilities within the community under a permit initially approved in 1996; and,

WHEREAS, the authority is nonexclusive; and,

WHEREAS, XO Communications Services, LLC has certified that the company meets the criteria of Section 949.05 of the Codified Ordinances of the City of Worthington for the issuance of a permit;

NOW, THEREFORE, BE IT RESOLVED by the Council of the Municipality of Worthington, County of Franklin, State of Ohio:

SECTION 1. That pursuant to Chapter 949 of the Codified Ordinances of the City of Worthington, an agreement between the City of Worthington and XO Communications Services, LLC, a Delaware Limited Liability Company as attached hereto and made a part hereof is hereby authorized and approved and the City Manager is hereby authorized and directed to execute said agreement on behalf of the City, upon approval thereof by the Director of Law.

SECTION 2. That the Clerk of Council be and hereby is instructed to record this Resolution in the appropriate record book.

Adopted \_\_\_\_\_

\_\_\_\_\_  
President of Council

Attest:

\_\_\_\_\_  
Clerk of Council



**TELECOMMUNICATIONS AND UTILITY PERMIT FOR THE USE OF PUBLIC  
RIGHTS-OF-WAY WITHIN THE CITY OF WORTHINGTON, OHIO**

This Agreement is executed on this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between XO Communications Services, LLC, a Delaware limited liability company, ("Company") and the City of Worthington, Ohio, an Ohio municipal corporation (the "City") pursuant to Resolution No. \_\_\_\_\_ adopted by the Worthington City Council on \_\_\_\_\_, 20\_\_.



Now, therefore, in consideration of the foregoing and of the covenants, promises and conditions hereinafter set forth it is hereby agreed as follows:

- I. That the Company, a limited liability company, organized under the laws of the State of Delaware, its successors and assigns, is hereby granted the non-exclusive right, privilege and authority in accordance with the provisions of Chapter 949 of the Codified Ordinances of the City to acquire, construct, maintain and operate a telecommunications system and/or utility in the City in and under, above, across and along the streets, alleys, thoroughfares, public rights-of-way, public property and easements as the same now exist or may hereafter be laid out in the City, with minimum interference with the proper use of same, for the provision of all competitive telecommunications services as authorized by the Public Utilities Commission of Ohio.
- II. The Company shall construct and operate the telecommunications and/or utility system in accordance with all laws, ordinances, construction standards, governmental requirements, FCC technical standards and any other standards incorporated by reference. Nothing in this Agreement permits the Company to provide any other utility services or cable television services.
- III. The Company shall comply with the applicable requirements of Chapter 949 of the City Codified Ordinances.
- IV. The Company shall pay the annual permit fee as determined by City Codified Ordinances Section 949.07.
- V. The Company agrees that all contractors and subcontractors proposed for work on construction, installation, operation, maintenance and repair of the system shall be properly licensed under the laws of the state of Ohio and all City ordinances.
- VI. Subject to the final requirements of this Section VI, in those areas where telephone and electric services are provided by underground facilities, the Company shall place all new facilities underground. In all other areas, the Company agrees to use its Best Efforts (as defined in Chapter 949 of the City Codified Ordinances) to place all facilities in the City right-of-way underground except for equipment which is customarily placed on or above the ground in conjunction with underground transmission facilities. In addition, where the City Manager or his designee determine that such transmission facilities should not be located underground, the City Manager shall have the authority to relieve the Company of the requirement to do so. In making such a determination, the City Manager may take into account unusual circumstances or physical characteristics including but not limited to the existence of underground facilities which might interfere with the operations of the Company, topographical features or use requirements which may interfere with existing facility locations. The City Manager may also relieve the Company of the requirement to

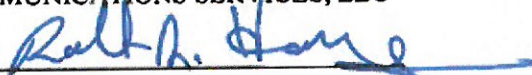


locate transmission facilities underground when to do so in a particular circumstance would not be in the best interest of the City. The installation of above-ground locator wire markers is prohibited.

- VII. The rights, privileges and authority hereby granted shall not be effective prior to acceptance of this Agreement by the Company and the City and shall terminate three years from the date of acceptance.
- VIII. The Company shall, at its sole cost and expense, fully indemnify, defend and hold harmless the City, its officers, public officials, boards and commissions, agents and employees from and against any and all lawsuits, claims, causes of action, actions, liability, and judgments for injury or damages in connection with this permit, the Company system, and construction, installation, maintenance, and repair thereof.
- IX. Whenever in this Agreement the City or Company is referred to, such reference shall be deemed to include the respective successor or assign of either, and all rights, privileges, and obligations herein contained shall bind and inure to the benefit of such respective successor or assign, in which the predecessor of such successor or assign is divested of all such rights, privileges, or obligations, whether so expressed or not.
- X. The terms and provisions of this Agreement are joint and several, and the invalidity of any part shall not affect the validity of the Agreement.
- XI. If this permit involves the installation of small cell facilities or wireless support structures in the right of way, then the Company shall also comply with the applicable requirements of Chapter 955 of the City Codified Ordinances. In the case of any conflict between the requirements of Chapter 955 and Chapter 949 of the City Codified Ordinances, the provisions of Chapter 955 shall control.

  
\_\_\_\_\_  
Witness  
  
\_\_\_\_\_  
Witness

XO COMMUNICATIONS SERVICES, LLC

By: 

Name: Robert J. Hayes

Title: Senior Manager Municipal Franchises

CITY OF WORTHINGTON

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

Approved as to Form:

\_\_\_\_\_  
Law Director, City of Worthington



**STAFF MEMORANDUM**  
**City Council Meeting – October 1, 2018**

Date: September 27, 2018

To: Matthew H. Greeson

From: Lori Trego, Personnel Director

Subject: **Ordinance No. 45-2018 - COHCC Joint Self-Insurance Agreement 2019-2021**

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**EXECUTIVE SUMMARY**

This Ordinance amends, adopts, and ratifies the Central Ohio Health Care Consortium (COHCC) Joint Self Insurance Agreement for the next three-year trust cycle, and approves the City's continued participation in the Consortium for the period 2019-2021.

**RECOMMENDATION**

Introduce for Public Hearing on October 15, 2018

**BACKGROUND/DESCRIPTION**

The City of Worthington has participated in the Central Ohio Health Care Consortium for many years to provide health insurance benefits to employees. The COHCC operates in three-year trust cycles and 2018 is the third year of the current trust. Members of the Consortium have worked with consultants and legal counsel to update and revise the Joint Self-Insurance Agreement, which is the contract document that governs the operations of the Consortium. The COHCC Board approved modifications to the agreement at the September 26, 2018 Board meeting. Provisions have been added to provide greater flexibility in recruiting new members, and to provide more options for determining stop loss pooling for very high cost claims. The updated agreement also now requires a wellness commitment for all participating entities.

The City of Worthington continues to benefit from membership in the COHCC, as even during years of high claims experience, the City's increases have been lessened by the overall performance of the Consortium. The COHCC is now comprised of eleven area cities or townships following the addition of one new member in 2018 (City of Pataskala).

**ATTACHMENTS**

Ordinance No. 45-2018  
Amended and Restated COHCC Joint Self-Insurance Agreement

ORDINANCE NO. 45-2018

Amending, Adopting and Ratifying the Amended and Restated Central Ohio Health Care Consortium Joint Self Insurance Agreement and Approving Participation by the City of Worthington in the Central Ohio Health Care Consortium for the Three-Year Period Beginning January 1, 2019.

WHEREAS, Section 9.833 of the Ohio Revised Code permits any Political Subdivision that provides health care benefits for its officers or employees to join in any combination with other Political Subdivisions to establish and maintain a joint self-insurance program to provide health care benefits pursuant to a written agreement; and,

WHEREAS, effective January 1, 1992, the undersigned joined the Central Ohio Health Care Consortium Joint Self-Insurance Agreement (the "Original Agreement") with other Political Subdivisions and established a joint self-insurance program to provide health care benefits for its officers and/or employees; and,

WHEREAS, the Original Agreement was terminated on July 1, 1994, through the implementation and execution of Amendment No. 1 to Central Ohio Health Care Consortium Joint Self-Insurance Agreement; and,

WHEREAS, the Agreement has been amended in subsequent years; and,

WHEREAS, the undersigned, together with other signatories now desire to make additional clarifications and modifications to the Agreement as attached hereto; and,

WHEREAS, the City desires to so continue its participation in the Consortium;

NOW, THEREFORE, BE IT ORDAINED by the Council of the Municipality of Worthington, County of Franklin, State of Ohio:

SECTION 1. That the Amended and Restated Central Ohio Health Care Consortium Joint Self-Insurance Agreement is hereby Amended, Adopted and Ratified as set forth in said Agreement, a copy of which is attached hereto and made a part hereof.

SECTION 2. That the City continue its participation in the Consortium under this Agreement for an additional three (3) year term commencing January 1, 2019, and that the appropriate officials of the City be authorized to execute and deliver appropriate written notification thereof to the Consortium pursuant to Section 3.06(a) of the Agreement.

ORDINANCE NO. 45-2018

SECTION 3. That notice of passage of this Ordinance shall be posted in the Municipal Administration Building, the Worthington Library, the Griswold Center and the Worthington Community Center and shall set forth the title and effective date of the Ordinance and a statement that the Ordinance is on file in the office of the Clerk of Council. This Ordinance shall take effect and be in force from and after the earliest period allowed by law and by the Charter of the City of Worthington, Ohio.

Passed \_\_\_\_\_

\_\_\_\_\_  
President of Council

Attest:

\_\_\_\_\_  
Clerk of Council

**AMENDED AND RESTATED  
CENTRAL OHIO HEALTH CARE CONSORTIUM  
JOINT SELF-INSURANCE AGREEMENT**

WHEREAS, Section 9.833 of the Ohio Revised Code permits any POLITICAL SUBDIVISION that provides health care benefits for its officers or employees to join in any combination with other POLITICAL SUBDIVISIONS to establish and maintain a joint self-insurance program to provide health care benefits pursuant to a written agreement (the “AGREEMENT”); and

WHEREAS, effective January 1, 1992, a number of POLITICAL SUBDIVISIONS joined together to form the Central Ohio Health Care Consortium Joint Self-Insurance Agreement with other POLITICAL SUBDIVISIONS and established a joint self-insurance program (the “Original Agreement”) to provide health care benefits for its officers and/or employees; and

WHEREAS, the Original Agreement was restated on July 1, 1994, through the implementation and execution of Amendment No. 1 to Central Ohio Health Care Consortium Joint Self-Insurance Agreement (“Amendment No. 1”); and

WHEREAS, in 1997, the MEMBERS of the POOL adopted Amendment No. 2 to Amendment No. 1 (“Amendment No. 2”), pursuant to which Sections 3.06(a) and 8.01(b) of Amendment No. 1 were amended; and

WHEREAS, in 2000, the MEMBERS further amended Amendment No. 1 and Amendment No. 2 by replacing existing Section 6.03 with a new provision regarding the POOL CONTRIBUTION FACTOR; and

WHEREAS, in 2003, the MEMBERS further amended Amendments No. 1 and No. 2 by modifying Section 7.01 Monthly Payments and Section 7.04 Assessments adding “Thereafter, payment is subject to a 5% penalty with the interest of 1½% per month or portion thereof”; and

WHEREAS, in 2006, the MEMBERS further amended Amendments No. 1 and No. 2 by modifying Section 3.05 and making other minor clarification modifications; and

WHEREAS, in 2009, the MEMBERS amended Amendments No. 1 and No. 2 by modifying Section 4.03 to add the BOARD office of Treasurer; by modifying Section 4.03 to add the Treasurer to the Executive Committee; by modifying Section 4.05 to create a Finance Committee; and by modifying Section 4.03 to eliminate the term limitation for BOARD Chairman; and

WHEREAS, in 2016, the MEMBERS amended and restated the AGREEMENT (the “RESTATED AGREEMENT”) to incorporate all prior and current amendments into one document and to modify the AGREEMENT to: 1) create a mandatory reserve and specify the method to determine and create the mandatory funding level; and 2) establish October 1<sup>st</sup> as the MEMBER withdrawal deadline; and

WHEREAS, in 2018, the MEMBERS again desire to amend and restate the AGREEMENT to provide current operating terms under the AGREEMENT for the three-year TERM of the AGREEMENT beginning January 1, 2019, making the changes identified herein;

NOW, THEREFORE, the undersigned agree as follows:

## **ARTICLE ONE NAME**

Section 1.01. Name. The unincorporated joint self-insurance program known as the Central Ohio Health Care Consortium (the “POOL”) is hereby continued as stated herein.

Section 1.02. Duration. The POOL shall have a perpetual duration and shall continue until terminated pursuant to this AGREEMENT. Health benefits coverage hereunder for VESTED MEMBERS initially commenced on January 1, 1992, immediately upon the termination of the health care coverage that previously was provided by Central Benefits Mutual Insurance Company.

Section 1.03. Legal Status. The POOL shall be deemed to be a legal entity, separate and apart from its MEMBERS, formed for the public purpose of enabling its MEMBERS to obtain insurance, to create a joint self-insurance program, and to provide for the joint administration of POOL as well as the FUNDS of the POOL.

Section 1.04. Effective Date. This AGREEMENT amends and completely supercedes the existing Central Ohio Health Care Consortium Joint Self-Insurance Agreement (the “RESTATED AGREEMENT”). This restated AGREEMENT shall become effective as of January 1, 2019.

## **ARTICLE TWO DEFINITIONS**

Section 2.01. Act. “ACT” means Section 9.833 of the Ohio Revised Code (“ORC”) and any successor statute thereto, as amended from time to time.

Section 2.02. Administrator. “ADMINISTRATOR” means the entity designated to supervise the administration of the POOL and to perform such other duties as are set forth in any applicable Administration Agreement.

Section 2.03. Agreement. “AGREEMENT” means this Amended and Restated Central Ohio Health Care Consortium Joint Self-Insurance Agreement and all counterparts hereto, as amended from time to time.

Section 2.04. Board. “BOARD” means the Board of Directors of the POOL.

Section 2.05. Contribution(s). “CONTRIBUTION(S)” means any amounts paid by a MEMBER to any FUND.

Section 2.06. Fund. “FUND” or “FUNDS” means those amounts paid by MEMBERS pursuant to Articles Six and Seven of this AGREEMENT.

Section 2.07. Member. “MEMBER” means a POLITICAL SUBDIVISION that is a party to this AGREEMENT and that has not withdrawn from or been terminated from participation in the POOL.

Section 2.08. Political Subdivision. “POLITICAL SUBDIVISION” has the same meaning given to it by the ACT.

Section 2.09. Pool Contribution Factor. “POOL CONTRIBUTION FACTOR” has the meaning as defined in Section 6.03 hereof.

Section 2.10. Scope of Coverage. “SCOPE OF COVERAGE” means the coverage, limits and deductibles set forth in Section 4.07 hereof.

Section 2.11. Surplus Funds. “SURPLUS FUNDS” means the amount by which the FUNDS available to operate the POOL for any year or years exceed all of the costs, liabilities (including claim liabilities, claim reserves and reserves for terminal liability) and expenses of operating the POOL.

Section 2.12. Term. “TERM” means a three-year contract period entered into by the MEMBERS beginning January 1 of any of the following years: 2010, 2013, 2016, 2019, 2022, 2025.

Section 2.13. Vested and Non-Vested Members. “VESTED MEMBER” means any MEMBER who was an original MEMBER of the POOL as well as any MEMBER after such MEMBER has completed one full three-year TERM, and “NON-VESTED MEMBER” means any MEMBER who has not completed one full three-year TERM. Prior to this 2019 restatement, such MEMBERS were referred to as FOUNDING and NON-FOUNDING MEMBERS.

Section 2.14. Terms Defined Elsewhere.

ACTUARY	Section 4.07(s)
CERTIFIED PUBLIC ACCOUNTANT or CPA	Section 4.07(s)
DIRECTOR	Section 3.04(c)
ELECTION	Section 3.05(c)
EXPECTED COSTS	Section 7.01
FUNDING RATE	Section 7.01
INCURRED BUT NOT REPORTED or IBNR	Section 6.04
POOL	Section 1.01
RESTATED AGREEMENT	Section 1.04
SECOND ELECTION	Section 3.05(d)
SMALL MEMBER GROUP	Section 6.03

### **ARTICLE THREE MEMBERSHIP**

Section 3.01. Qualification. An applicant seeking membership in the POOL must meet all of the qualifications required by the ACT and, in the case of a NON-VESTED MEMBER, must demonstrate to the satisfaction of the BOARD the financial ability to pay all CONTRIBUTIONS.

Section 3.02. Application. All applicants to become MEMBERS shall apply for membership in any manner and on any form approved by or acceptable to the BOARD.

Section 3.03. Effective Time of Membership. An applicant shall become a MEMBER at the time that a duly authorized officer of the applicant executes, and a duly authorized officer of the POOL accepts, this AGREEMENT on behalf of the POOL. No applicant shall be permitted to become a MEMBER unless it provides written documentation satisfactory to the BOARD, in its sole judgment, that the applicant has the requisite capacity and authority, and has obtained all required approvals, to execute this AGREEMENT and to perform all of its obligations hereunder.

Section 3.04. Duties of Members. Each MEMBER agrees to do or cause to be done all of the following:

(a) to cooperate with and institute all loss prevention procedures and guidelines developed by the BOARD or the ADMINISTRATOR;

(b) to adopt and institute wellness program components or options as identified by the BOARD or the ADMINISTRATOR;

(c) to designate a representative of the MEMBER (a "DIRECTOR") to serve on the BOARD, and to cause that DIRECTOR to attend all monthly and special meetings of the BOARD;

(d) to provide the ADMINISTRATOR access to the records of the MEMBER during normal business hours, upon 24 hours' prior written notice and only for the purpose of conducting necessary services related to the operation of the POOL and for no other purpose;

(e) to permit the ADMINISTRATOR and any agent or attorney thereof to represent the MEMBER in investigating, litigating and settling any claim made against the POOL or the MEMBER that is within the SCOPE OF COVERAGE provided by the POOL; and

(f) to promptly pay when and as due all CONTRIBUTIONS, assessments and uncovered losses (as described in Sections 7.02 and 7.03), if any, required under this AGREEMENT.



Section 3.05. Terms of Membership.

(a) Each original VESTED MEMBER of the POOL committed to remain a MEMBER for three years, until December 31, 1994. Thereafter, the MEMBERS agreed to continue the POOL for three successive three-year terms (each such three-year period hereunder, a "TERM"). In 2003, the MEMBERS agreed to continue the POOL for successive three-year TERMS indefinitely.

(b) The MEMBERS intend that the POOL shall continue in effect indefinitely, for succeeding three-year TERMS, subject to the continual election of MEMBERS to remain participants in the POOL as provided below.

(c) On or before October 1, of the last year of the current TERM (the "ELECTION"), each MEMBER of the POOL shall indicate in writing to the BOARD whether or not it intends to continue its participation beyond the current TERM. At least two MEMBERS must elect to continue their participation for the POOL to continue. If less than two MEMBERS elect to continue, the POOL shall terminate effective as of 11:59 p.m., local Columbus, Ohio time, on December 31 of the last year of the current TERM, and the BOARD shall be responsible for winding up and dissolving the affairs of the POOL.

(d) If MEMBERS representing more than one-third (1/3) of the employees and officers of MEMBERS insured by the POOL elect to leave the POOL at the ELECTION, the remaining MEMBERS shall be given another opportunity to indicate in writing whether they desire to continue in the POOL (the "SECOND ELECTION"). The SECOND ELECTION shall be made by each remaining MEMBER on or before November 1, and at least two MEMBERS must elect to continue their participation for the POOL to continue. If less than two MEMBERS elect to continue, the POOL shall terminate effective as of 11:59 p.m., local Columbus, Ohio time, on December 31 of the last year of the current TERM, and the BOARD shall be responsible for winding up and dissolving the affairs of the POOL.

(e) If two or more MEMBERS elect to continue, either at the ELECTION or SECOND ELECTION, all such MEMBERS shall be required to participate for another three-year TERM; provided, however, that any such continuing MEMBER may voluntarily withdraw at the end of any year within that subsequent TERM upon compliance with the withdrawal provisions of Section 8.01 herein. The rights of MEMBERS to share in the SURPLUS FUNDS of the POOL upon withdrawal are governed by Section 8.01 hereof.

Section 3.06. Terms of Membership for Non-Vested Member.

(a) Upon initial entry into the POOL, each NON-VESTED MEMBER shall be required to remain a MEMBER, and may not withdraw from the POOL, until the December 31<sup>st</sup> following the second anniversary of the MEMBER'S joining the POOL. A MEMBER'S rights to participate in and/or withdraw from the POOL for any subsequent TERM shall be governed by Section 3.05 hereof.

(b) Subject to Section 8.01 hereof, NON-VESTED MEMBERS shall be entitled to share in SURPLUS FUNDS of the POOL on the same basis as VESTED MEMBERS. NON-VESTED MEMBERS shall pay a surcharge and/or otherwise buy into such surplus on terms established by the BOARD.

#### **ARTICLE FOUR BOARD OF DIRECTORS**

Section 4.01. Establishment of Board. The POOL shall have a Board of Directors, which shall, among other duties, determine the general policy of the POOL. Each MEMBER shall be entitled to appoint one DIRECTOR to the BOARD.

Section 4.02. Term of Directorships. A person appointed by a MEMBER to serve as a DIRECTOR on the BOARD shall remain in office until (1) the POOL receives evidence of the appointment of his or her successor or (2) the effective time of the withdrawal from or termination of the MEMBER'S participation in the POOL.

Section 4.03. Officers and Executive Committee. The BOARD shall annually elect from the DIRECTORS of the BOARD a Chairman, a Vice-Chairman, a Secretary, and a Treasurer. The DIRECTORS receiving the largest number of votes for each office shall be elected.

The BOARD shall annually elect an executive committee to be comprised of the Chairman, the Vice-Chairman, the Secretary and the Treasurer of the POOL, and two other DIRECTORS. The two DIRECTORS receiving the largest number of votes for the executive committee shall be elected. The executive committee may bind the BOARD only as to matters over which the BOARD has given express authorization.

Section 4.04. Meetings.

(a) Meetings of the BOARD shall be held monthly at such time as the Secretary shall prescribe. Such meetings may be held and attended in person or electronically through teleconference, video conference or other appropriate means. The Secretary shall give written or electronic notice to each DIRECTOR of the time, date, place, and format of each meeting, at least seven days prior to each meeting. This notice may, but is not required to, contain an agenda of items to be discussed. Any item of POOL business may be considered at the monthly meetings contained in the notice of the meeting.

(b) Special meetings may be called by the ADMINISTRATOR, the Chairman, or by a majority of the DIRECTORS. Only items listed for discussion in the notice of the special meeting may be considered. The Secretary shall give written or electronic notice to each DIRECTOR of the time, date, place, format and purposes of a special meeting at least three days prior to each meeting.

Section 4.05. Committees of the Board.

(a) The BOARD shall appoint a standing Finance Committee consisting of as many DIRECTORS, proxies or other designees as the BOARD chooses and to be chaired by the Treasurer. The Finance Committee shall be responsible for the POOL's pricing policies and related matters.

(b) The BOARD shall also appoint a standing Benefits Committee consisting of as many DIRECTORS, proxies or other designees as the BOARD chooses and to be chaired by a member of the Benefits Committee as selected by the Committee members. The Benefits Committee shall be responsible for evaluating benefit plan designs, wellness initiatives and related matters.

(c) The Chairman or BOARD may from time to time appoint ad hoc committees consisting of no fewer than five of the DIRECTORS. Membership of the ad hoc committees may be changed at any time by the Chairman or by the BOARD. An ad hoc committee may bind the BOARD only as to matters over which the BOARD has given such committee express authorization.

Section 4.06. Compensation. DIRECTORS shall be entitled to reimbursement of actual expenses incurred in the pursuit of POOL business and such other reasonable and lawful compensation as may be awarded from time to time by the BOARD.

Section 4.07. Powers and Duties. The BOARD is authorized and directed to carry out each and every act necessary, convenient or desirable to and for carrying out the purpose of this AGREEMENT and the POOL, including, but not limited to:

- (a) hiring the ADMINISTRATOR;
- (b) receiving MEMBERS' CONTRIBUTIONS;
- (c) administering the POOL and settling and paying, or causing the payment of, claims on behalf of the MEMBERS;
- (d) making and entering into contracts to conduct and operate the POOL, including, but not limited to, the execution of an administrative agreement with the ADMINISTRATOR;
- (e) employing agents and employees on behalf of the POOL;
- (f) establishing and adopting requirements for membership in the POOL, including, but not limited to, a potential member's commitment to certain wellness initiatives to be identified by the BOARD and/or the ADMINISTRATOR;
- (g) approving new MEMBERS;
- (h) terminating the participation of existing MEMBERS;

- (i) approving and amending the annual budget of the POOL;
- (j) resolving disputes over the SCOPE OF COVERAGE provided by the POOL;
- (k) approving educational and other programs relating to risk reduction;
- (l) approving reasonable and necessary loss reduction and preventive procedures to be followed by all MEMBERS;
- (m) approving each MEMBER'S FUNDING RATE (as that term is defined in Section 7.01 hereof);
- (n) establishing rules and regulations regarding the payment of FUNDS from the POOL as shall from time to time seem appropriate or necessary, including the payment of reasonable expenses related to the administration of the POOL;
- (o) establishing and adopting policies for the administration of the POOL and/or the FUNDS, including, but not limited to investment and mandatory reserve policies as well as policies for pricing and rating;
- (p) investing POOL monies;
- (q) providing surety and/or fidelity bonds for DIRECTORS and all persons charged with the custody or investment of POOL FUNDS;
- (r) purchasing directors and officers, errors and omissions and such other insurance coverage for the benefit of the POOL and its DIRECTORS as the BOARD shall deem necessary, appropriate or desirable;
- (s) hiring an independent actuary who shall be a member of the American Academy of Actuaries (the "ACTUARY") as well as a CERTIFIED PUBLIC ACCOUNTANT (the "CPA") to perform duties required by ORC Section 9.833 or otherwise by the BOARD;
- (t) hiring independent legal counsel to provide services to the BOARD and POOL, as necessary;
- (u) establishing one or more bank accounts, which may include establishing a trust(s) with the trust department(s) of one or more National bank(s), to collect premiums, pay claims and otherwise to manage and account for all POOL FUNDS;
- (v) requiring the ADMINISTRATOR to provide evidence of coverage satisfactory to the BOARD with respect to stop-loss and/or any other kind of insurance purchased by the ADMINISTRATOR for the benefit of the POOL; and

(w) determining whether the POOL has any SURPLUS FUNDS and, if so, how such SURPLUS FUNDS shall be utilized for the operation of the POOL and/or shall be distributed to MEMBERS, in accordance with the terms of this AGREEMENT.

The coverage, limits, deductibles and other terms of the health care benefits (the "SCOPE OF COVERAGE") to be provided by the POOL are described in documents maintained by the BOARD and incorporated herein by this reference. From time to time, the BOARD may revise the SCOPE OF COVERAGE as it deems necessary or appropriate.

The BOARD may delegate one or more of these duties to one or more committees established under Section 4.05, with oversight and approval retained by the BOARD.

Section 4.08. Voting; Proxies. Each DIRECTOR shall be entitled to one vote on each matter voted upon by the BOARD, except that the Chairman shall have an additional vote in the event of a tie. A DIRECTOR may be represented and may vote by a proxy appointed by an instrument in writing signed by the DIRECTOR and confirmed by the MEMBER which elected such DIRECTOR, but such instrument must be filed with the Secretary of the meeting before the person holding the proxy shall be allowed to vote.

The BOARD may include in any process or procedure for administering the POOL, including voting, the use of alternative media, including, but not limited to, telephonic, facsimile, computer or other such electronic means as available. Use of alternative media shall be deemed to satisfy any requirements of the POOL or this AGREEMENT requiring a "written" document or an instrument signed "in writing" to the extent permissible under the ORC, or the Internal Revenue Code of 1986, as amended, if applicable.

Section 4.09. Quorum. A quorum of the BOARD shall consist of fifty percent (50%) of the DIRECTORS. Except as provided in Section 11.09 below, the affirmative vote of a majority of the DIRECTORS present at a meeting at which a quorum is present shall be the vote of the BOARD.

## **ARTICLE FIVE ADMINISTRATOR**

Section 5.01. Contract. The BOARD shall contract with an ADMINISTRATOR and delegate to such ADMINISTRATOR some or all of its contractual powers and duties (set forth in Article Four above), as the BOARD shall deem advisable.

Section 5.02. Annual Report. The BOARD shall require the ADMINISTRATOR to prepare and present to the BOARD an annual report regarding the condition of the POOL, within 90 days after each calendar year end. The report shall be in such form and include such information as is prescribed by, or acceptable to, the BOARD. The report may be consolidated with the ADMINISTRATOR'S budget recommendation required by Section 6.02 hereof.

## ARTICLE SIX POOL FUNDS

Section 6.01. Establishment of the Funds(s). The BOARD shall establish one or more FUNDS which shall consist of MEMBER CONTRIBUTIONS in amounts it deems sufficient to annually fund the administrative expenses of the POOL, to purchase excess insurance, stop-loss insurance or reinsurance for the POOL, to pay current year claims and claim expenses and to establish and maintain sufficient reserves. At or about the close of any three-year TERM hereunder, the BOARD may also establish one or more FUNDS, which may consist of MEMBER CONTRIBUTIONS and/or any existing SURPLUS FUNDS, in amounts it deems appropriate to fund the claims, claims expense and other costs and expenses associated with the termination and run-off of the three-year TERM then ending.

Section 6.02. Budget. No later than October 1 in each POOL year, the ADMINISTRATOR shall prepare and submit to the BOARD an estimate of the budget of the POOL for the succeeding calendar year. If the budget is acceptable to the BOARD, the BOARD shall approve such budget in the manner established in Article Four.

Section 6.03. Pool Contribution Factor. The POOL CONTRIBUTION FACTOR for each MEMBER of the POOL shall be as follows:

Number of Employees and Officers Insured by the MEMBER	Percentage of Adjustment Related to the MEMBER'S Loss Experience	Percentage of Adjustment Related to the POOL'S Loss Experience
-----	-----	-----
50-99	20%	80%
100-124	30%	70%
125-149	40%	60%
150-199	50%	50%
200-299	60%	40%
300 +	80%	20%

With respect to those MEMBERS whose number of insured employees and officers is fewer than 50, all such MEMBERS shall be treated as a single group (the "SMALL MEMBER GROUP"). The POOL CONTRIBUTION FACTOR for each MEMBER in the SMALL MEMBER GROUP shall be determined by adding all employees and officers insured by each MEMBER in the SMALL MEMBER GROUP, and by then applying the percentages shown in the chart shown above to that total. Such determination shall reviewed at the conclusion of each TERM in order to determine whether any MEMBER should be removed from or return to the SMALL MEMBER GROUP, as well as the POOL CONTRIBUTION FACTOR to be applied for the upcoming TERM.

Each POOL CONTRIBUTION FACTOR shall remain constant for the entire life of the POOL, subject to change only as provided in Section 11.09 hereof. Notwithstanding the above, the BOARD shall have the authority to use reasonable

discretion in the consideration of extenuating circumstances that may apply to any MEMBER in the determination and application of the appropriate POOL CONTRIBUTION FACTOR for such MEMBER. Further, the BOARD may develop and adopt policies regarding pricing and rates for MEMBERS, and particularly new NON-VESTED MEMBERS (as provided in Section 4.07(o)), based on the prior status of such MEMBER's benefit programs (e.g., fully-insured, self-funded with run-out claims liability, self-funded without run-out claims liability, etc.).

Additionally, and notwithstanding anything contained in this AGREEMENT elsewhere to the contrary, the MEMBERS in the SMALL MEMBER GROUP shall be treated as if they were a single MEMBER not only for purposes of determining their POOL CONTRIBUTION FACTOR, but also for purposes of allocating and distributing SURPLUS FUNDS, establishing the FUNDING RATE for the SMALL MEMBER GROUP and for determining and assessing supplemental payments to the POOL under Article Seven of the AGREEMENT. In each such case, the MEMBER'S rights and/or liabilities within the SMALL MEMBER GROUP shall be determined by dividing (a) the number of employees and officers insured by the MEMBER by (b) the total number of all employees and all officers insured by all MEMBERS within the SMALL MEMBER GROUP, and applying that fraction to each such MEMBER as the BOARD shall deem appropriate under the circumstances.

Except as otherwise provided in the preceding paragraph, the MEMBERS in the SMALL MEMBER GROUP shall be treated as separate and distinct MEMBERS for all other purposes under the AGREEMENT. The BOARD shall have the authority to interpret this AGREEMENT to resolve any conflicts or issues arising out of the creation of the SMALL MEMBER GROUP and the allocation of any rights and liabilities to each MEMBER within the SMALL MEMBER GROUP.

Section 6.04. Mandatory Reserve. The BOARD shall establish a mandatory reserve for the purposes of protecting the FUND from future losses and maintaining fiscal solvency. This reserve shall be set aside for contingencies and potential unforeseen liabilities such as a spike in claims payments in excess of expected claims. As a part of the annual budget process, the mandatory reserve target shall be calculated as the greater of either the FUND'S INCURRED BUT NOT REPORTED ("IBNR") estimate as identified by the ADMINISTRATOR, or the prior year's average three month claims expense. For purposes of a NON-VESTED MEMBER, the pricing of such reserve amount will be phased in over the first two years of the NON-VESTED MEMBER's participation in the POOL. Should additional CONTRIBUTIONS be required to achieve the reserve funding target, the BOARD shall determine a reserve surcharge for MEMBERS to be included in the MEMBERS' CONTRIBUTIONS.

Section 6.05. Surplus Funds. In the event that MEMBER CONTRIBUTIONS exceed claims and expenses for the FUND, the BOARD, shall first apply the SURPLUS FUNDS to the mandatory reserve. Should the reserve exceed the BOARD'S established funding target, the BOARD may, in its sole discretion, apply SURPLUS FUNDS toward the CONTRIBUTIONS of MEMBERS for any subsequent year, and/or fund any other necessary and proper cost, liability and/or expense of the POOL. Additionally, the BOARD may refund to its MEMBERS all or some portion of the excess payments, if

any, made by its MEMBERS to the POOL, which reimbursement may be based on each MEMBER'S and the POOL'S loss experience and such other factors as the BOARD deems appropriate under the circumstances. The BOARD shall determine the amount of SURPLUS FUNDS, if any, as of December 31 of each year hereunder on or before April 1 in each succeeding year, and shall promptly communicate this information to each MEMBER.

Section 6.06. Purchase of Stop-Loss Insurance. The BOARD shall use its best efforts hereunder to purchase aggregate stop-loss insurance for the POOL. The BOARD shall also investigate the purchase of specific stop-loss coverage, and upon the termination of the POOL, the availability of insurance to cover the terminal liabilities of the withdrawing MEMBERS, and shall purchase such coverage if deemed to be in the best interests of the MEMBERS at that time. The BOARD may, in its discretion, create sub-pools for the allocation of the costs for any purchased stop-loss coverage, with such factors to be reviewed on an actuarial basis, and applied each TERM.

Section 6.07. Actuarial and Financial Reports. The BOARD shall require the ACTUARY and the CPA to prepare and deliver to the BOARD the report(s) required by ORC Section 9.833.

## ARTICLE SEVEN FUNDING SCOPE OF RISK SHARING PROTECTION

Section 7.01. Monthly Payments. On or before October 1 in each year, the BOARD (after consultation with its ADMINISTRATOR, its ACTUARY or such other persons as the BOARD may deem necessary or appropriate) shall calculate the expected costs ("EXPECTED COSTS") for the POOL for the next calendar year. EXPECTED COSTS shall include anticipated claims costs and fixed and administrative costs associated with the operation of the POOL, including premiums for stop-loss insurance, excess insurance and directors and officers' liability insurance, errors and omissions insurance and fees for its ADMINISTRATOR, ACTUARY, CPA and legal counsel. After calculating EXPECTED COSTS and on or about October 1 in each year, the BOARD shall determine each MEMBER'S FUNDING RATE ("FUNDING RATE"). A MEMBER'S FUNDING RATE shall be determined with reference to the number of employees and officers of the MEMBER who are covered by the POOL as of September 1, the loss experience of the MEMBER and the MEMBER'S POOL CONTRIBUTION FACTOR. FUNDING RATES shall be established so as to enable the POOL to satisfy its EXPECTED COSTS, as well as any additional funding deemed necessary or appropriate by the BOARD. By way of example, the BOARD may establish FUNDING RATES to provide funds in excess of EXPECTED COSTS in order to establish reserves for future POOL year operations.

FUNDING RATES shall be paid monthly by MEMBERS, and payment must be received by the POOL on or before the 15<sup>th</sup> of each month hereunder with no grace period whatsoever. Thereafter, payment is subject to a 5% penalty with the interest of 1½% per month or portion thereof.



Section 7.02. Assessments. From time to time, the BOARD may require that MEMBERS make supplemental payments to the POOL for any necessary or appropriate purpose where there is reasonable concern that FUNDS then available to the POOL (whether through surplus, monthly payments of FUNDING RATES, stop-loss coverage, reinsurance or otherwise) will not be sufficient to meet the responsibilities of the POOL; provided, however, that the total of such supplemental payments and all payments under Section 7.01 hereof in any year shall not exceed two hundred percent (200%) of the EXPECTED COSTS for that POOL year. The BOARD may assess supplemental payments from MEMBERS, including withdrawn or terminated MEMBERS (related to their period of membership in the POOL), for any one or more years of their membership. All assessments for supplemental payments shall be made proportionately among the MEMBERS of the POOL for the year as to which the assessment relates, in direct relation to each MEMBER'S FUNDING RATE for that year.

MEMBERS shall be responsible for supplemental payments during the life of the POOL and any later period when claims or expenses need to be paid which are attributable to any year of membership during which the event causing the expenses or claims requiring the supplemental payments occurred.

Section 7.03. Member Reversion.

(a) In the event that the losses of the POOL in any year exceed amounts paid to the POOL under Sections 7.01 and 7.02, together with all stop-loss, reinsurance and other coverage then in effect, then the payment of any uncovered losses shall be covered by the POOL and such losses shall be allocated to the MEMBERS as part of the POOL CONTRIBUTION FACTOR described in Section 6.03.

(b) In the event that the administrative costs and expenses of operating the POOL exceed the FUNDS available therefor, including but not limited to amounts available to the POOL by assessment under Section 7.02, then the BOARD may assess the MEMBERS for such deficiency. All such assessments shall be made proportionately among the MEMBERS for the year, as to which the assessment relates, in direct relation to each MEMBER'S FUNDING RATE for that year.

Section 7.04. Payment of Assessments. Each MEMBER shall promptly pay all assessments hereunder, and in each case no later than the forty-fifth (45<sup>th</sup>) day after the BOARD has given the MEMBER written notice of the assessment, with no grace period whatsoever. Thereafter, payment is subject to a 5% penalty with the interest of 1½% per month or portion thereof.

## **ARTICLE EIGHT MEMBER'S WITHDRAWAL OR TERMINATION**

Section 8.01. Withdrawal.

(a) A VESTED MEMBER, or a NON-VESTED MEMBER that has completed its membership requirement as described in Section 3.06, may withdraw from

the POOL by giving prior written notice to the POOL no later than October 1 of the year in which membership is to cease. The MEMBER'S withdrawal shall be effective as of 11:59 p.m., local Columbus, Ohio time, on December 31 in the year in which such notice is given; provided, however, that the MEMBER shall remain liable thereafter for any assessments which the BOARD may make under Sections 7.02 and/or 7.03. At and after the effective time of withdrawal, the withdrawing MEMBER shall be wholly and solely responsible for providing health care (and other, if any) benefits that previously had been provided by the POOL, including but not limited to any and all IBNR and/or terminal liabilities related to its prior POOL participation, to the extent such expenses exceed the total of the MEMBER's CONTRIBUTIONS for the last three months as an active MEMBER, and the POOL shall have absolutely no liabilities to the MEMBER in that regard.

(b) No withdrawing MEMBER shall have any rights whatsoever to participate in a distribution of the SURPLUS FUNDS of the POOL, whether then or any time thereafter.

Section 8.02. Termination. Upon a vote of the BOARD taken in accordance with Article Four and upon five days' written notice, a MEMBER'S participation may be terminated if such MEMBER materially breaches or violates any of the terms of this AGREEMENT. Without limiting the generality of the foregoing, the failure of a MEMBER to promptly make payments to the POOL in complete conformity with the provisions of Article Seven shall be deemed to be a material breach and violation of this AGREEMENT which warrants termination. Upon termination, the terminated MEMBER shall (a) remain liable for any and all amounts remaining due and unpaid under Article Seven, (b) have no rights whatsoever to share in any SURPLUS FUNDS then and/or at any time thereafter, and (c) effective as of 11:59 p.m., local Columbus, Ohio time, on the date on which such termination is effective, the terminated MEMBER shall be wholly and solely responsible for providing health care (and other, if any) benefits that previously had been provided by the POOL, including, but not limited to, any and all IBNR and/or terminal liabilities related to its prior POOL participation, to the extent such expenses exceed the total of the MEMBER's CONTRIBUTIONS for the last three months as an active MEMBER, and the POOL shall have absolutely no liabilities to the MEMBER in that regard.

## **ARTICLE NINE TERMINATION OF POOL**

Section 9.01. Termination. This AGREEMENT may be terminated only by the written agreement of no less than two-thirds (2/3) of all MEMBERS. After a vote to terminate the POOL, the BOARD shall wind-up the POOL'S business as quickly as practicable, but in any event shall complete this process no later than 12 months after the termination date. During such period, the POOL shall continue to pay all claims and expenses until the POOL FUNDS are exhausted.

After payment of all claims and expenses, or upon the termination of the 12-month period, any remaining SURPLUS FUNDS held by the POOL shall be paid to the

MEMBERS of the POOL who are MEMBERS as of the termination date. The BOARD shall determine the manner in which such SURPLUS FUNDS shall be distributed, and shall consider (a) the percentage relationship which each MEMBER'S CONTRIBUTIONS to the POOL for the prior three calendar years of the POOL bears to all MEMBERS' CONTRIBUTIONS to the POOL for that same period and (b) the loss experiences of each MEMBER for the prior three calendar years of the POOL. If, after the payment of all claims and expenses, or upon the termination of the 12-month period, the POOL'S funds are not sufficient to pay claims and expenses, the payment of any uncovered losses shall revert to and be the sole obligation of the individual MEMBERS against which the claims or expenses were made, and the BOARD shall assess such MEMBERS for the full amount owed.

The POOL, through the BOARD, may require that MEMBERS provide written documentation satisfactory to the BOARD, in its sole judgment, that such MEMBER has the requisite capacity and authority, and has obtained all required approvals, to vote on any matter contemplated by this Section 9.01.

The POOL shall not be responsible for any claims filed after the 12-month period. MEMBERS shall remain obligated to make payments to the POOL pursuant to Article Seven related to periods prior to the termination date.

## **ARTICLE TEN INDEMNIFICATION**

Section 10.01. Indemnification. Subject to the determination required by Section 10.03 below, the POOL shall indemnify any officer or DIRECTOR of the POOL who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including, without limitation, any action threatened or instituted by or in the right of the POOL), against expenses (including, without limitation, reasonable attorneys' fees, filing fees, court reporters' fees and transcript costs), judgments, fines and amounts paid in settlement actually and reasonably incurred by the officer or DIRECTOR in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the POOL, and with respect to any criminal action or proceeding, he had no reasonable cause to believe his conduct was unlawful. A person claiming indemnification under this Section 10.01 shall be presumed, in respect of any act or omission giving rise to such claim for indemnification, to have acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the POOL, and with respect to any criminal matter, to have had no reasonable cause to believe his conduct was unlawful, and the termination of any action, suit or proceeding by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, rebut such presumption.

Section 10.02. Court-Approved Indemnification. Anything contained in this AGREEMENT or elsewhere to the contrary notwithstanding:

(a) the POOL shall not indemnify any officer or DIRECTOR of the POOL who was a party to any completed action or suit instituted by or in the right of the POOL to procure a judgment in its favor by reason of the fact that he is or was a DIRECTOR, officer, employee or agent of the POOL, in respect of any claim, issue or matter asserted in such action or suit as to which he shall have been adjudged to be liable for acting with reckless disregard for the best interests of the POOL or misconduct (other than negligence) in the performance of his duty to the POOL unless and only to the extent that the Court of Common Pleas of Franklin County, Ohio or the court in which such action or suit was brought shall determine upon application that, despite such adjudication of liability, and in view of all the circumstances of the case, he is fairly and reasonably entitled to such indemnity as such Court of Common Pleas or such other court shall deem proper; and

(b) the POOL shall promptly make any such unpaid indemnification as is determined by a court to be proper as contemplated by this Section 10.02.

Section 10.03. Determination Required. Any indemnification provided for under Section 10.01 and not precluded under Section 10.02 shall be made by the POOL only upon a determination that such indemnification of the officer or DIRECTOR is proper in the circumstances because he has met the requirements set forth in Section 10.01. Such determination may be made only (a) by a majority vote of a quorum consisting of DIRECTORS of the BOARD who were not and are not parties to, or treated with, any such action, suit or proceeding, or (b) if such a quorum is not obtainable or if a majority of a quorum of disinterested DIRECTORS so directs, in a written opinion by independent legal counsel other than an attorney, or a firm having associated with it an attorney, who has been retained by or who has performed services for the POOL or any person to be indemnified, within the past five years, or (c) by the court in which such action, suit or proceeding was brought, if any.

Section 10.04. Advances for Expenses. Expenses (including, without limitation, reasonable attorneys' fees, filing fees, court reporters' fees and transcript costs) incurred in defending any action, suit or proceeding referred to in Section 10.01 shall be paid by the POOL in advance of the final disposition of such action, suit or proceeding to or on behalf of the officer or DIRECTOR promptly as such expenses are incurred by him, but only if such officer or DIRECTOR shall first agree, in writing, to repay all amounts so paid in respect of any claim, issue or other matter asserted in such action, suit or proceeding in defense of which he shall not have been successful on the merits or otherwise:

(a) if it shall ultimately be determined as provided in Section 10.03 that he is not entitled to be indemnified by the POOL as provided under Section 10.01; or

(b) if, in respect of any claim, issue or other matter asserted by or in the right of the POOL in such action or suit, he shall have been adjudged to be liable for acting with reckless disregard for the best interests of the POOL or misconduct (other than negligence) in the performance of his duty to the POOL, unless and only to the extent that the Court of Common Pleas of Franklin County, Ohio or the court in which such action or suit was brought shall determine upon application that, despite such

adjudication of liability, and in view of all the circumstances, he/she is fairly and reasonably entitled to all or part of such indemnification.

Section 10.05. Article Ten Not Exclusive. The indemnification provided by this Article Ten shall not be exclusive of, and shall be in addition to, any other rights to which any person seeking indemnification may be entitled, and shall continue as to a person who has ceased to be an officer or DIRECTOR of the POOL and shall inure to the benefit of the heirs, executors, executors, and administrators of such a person.

## **ARTICLE ELEVEN MISCELLANEOUS**

Section 11.01. Ohio Law Governs. This AGREEMENT shall be governed by and construed in accordance with the laws of the State of Ohio.

Section 11.02. Enabling Action by Members. If any action requiring the vote, consent or approval of any or all MEMBERS of the POOL, is required in order to make permissible or lawful any actions contemplated by this AGREEMENT, each DIRECTOR will vote for such action on behalf of its MEMBER.

Section 11.03. Counterparts. This AGREEMENT and any amendment hereto may be executed in one or more counterparts, each of which shall be deemed to be an original, but all counterparts taken together shall constitute one and the same AGREEMENT.

Section 11.04. Severability. The invalidity or unenforceability of any provision of this AGREEMENT in any particular respect shall not affect the validity and enforceability of any other provision of this AGREEMENT or of the same provision in any other respect.

Section 11.05. Captions. All captions used in this AGREEMENT are for convenience or reference only, do not form a substantive part of this AGREEMENT and shall not restrict or enlarge any substantive provision of this AGREEMENT.

Section 11.06. Notices. All notices and other communications required or permitted under this AGREEMENT shall be in writing and shall be mailed by regular U.S. mail, postage prepaid, or otherwise delivered by hand or by messenger, addressed (a) if to a MEMBER, to the DIRECTOR representing that MEMBER at such DIRECTOR'S address set forth on the last page of this AGREEMENT or at such other address as the MEMBER or DIRECTOR shall have furnished to the POOL in writing or (b) if to the POOL, at the POOL address set forth on the last page of this AGREEMENT and addressed to the attention of the Secretary of the POOL or at such other address as the POOL shall have furnished to the MEMBERS in writing. Each such notice or other communication shall for all purposes of this AGREEMENT be treated as effective or having been given (a) when delivered, if delivered personally or (b) if sent by mail, when deposited in a regularly maintained receptacle for the deposit of the United States mail, addressed and mailed in compliance with this Section 11.06.

Notwithstanding the foregoing, the parties may elect to use alternative media for the purpose of providing such notices and communications, including, but not limited to, facsimile, computer or other such electronic means as are available, provided that any method used shall include a confirmation statement or receipt providing evidence that such transmission was received by the intended recipient.

Section 11.07. Entire Agreement. This AGREEMENT constitutes the entire agreement between the parties hereto in respect of the subject matter of this AGREEMENT, and this AGREEMENT supersedes all prior and contemporaneous agreements between the parties hereto in respect of the subject matter of this AGREEMENT.

Section 11.08. Pronouns; Gender. All pronouns and any variations thereof used in this AGREEMENT to refer to any person or persons shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identity of the person or persons may require.

Section 11.09. Amendment. This AGREEMENT may be amended only by the written agreement of no less than two-thirds (2/3) of all MEMBERS. The POOL, through the BOARD, may require that MEMBERS provide written documentation satisfactory to the BOARD, in its sole judgment, that such MEMBER has the requisite capacity and authority, and has obtained all required approvals to vote on any matter contemplated by this Section 11.09.

Section 11.10. Other Instruments. The MEMBERS agree to execute such further instruments and to take such further action as may reasonably be necessary to carry out the intent of this AGREEMENT.

IN WITNESS WHEREOF, this AGREEMENT was executed on the \_\_\_\_\_ day of \_\_\_\_\_, 2018 by the undersigned duly authorized officer of the MEMBER indicated below:

ACCEPTED FOR THE CENTRAL  
OHIO HEALTH CARE  
CONSORTIUM:

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

MEMBER:

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**STAFF MEMORANDUM**  
**City Council Meeting – October 1, 2018**

Date: September 27, 2018

To: Matthew H. Greeson, City Manager

From: Scott F. Bartter, Finance Director

Subject: **Ordinance No. 46-2018 - Additional Appropriation**

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**EXECUTIVE SUMMARY**

This ordinance appropriates additional funds for the purpose of funding police overtime and costs assessed by the County for collecting property tax revenue for the Downtown TIF.

**RECOMMENDATION**

Introduce for Public Hearing

**BACKGROUND**

The police department has experienced a shortage of staff due to a combination of both long-time employees retiring and injury to current employees. Staff expects that as newly hired police officers complete their training and become available that the overtime usage will decrease. This Ordinance provides an additional appropriation to pay the overtime costs.

The City has received the first distribution of funds associated with the Tax Increment Financing District in Old Worthington. The City owes payments to Franklin County associated with collection costs of the funds and other costs identified in the Ohio Revised Code. This Ordinance appropriates the funds necessary to make the payment to the County.

**FINANCIAL IMPLICATIONS/FUNDING SOURCES**

\$107,300

**ATTACHMENTS**

Ordinance No. 46-2018

## ORDINANCE NO. 46-2018

Amending Ordinance No. 41-2017 (As Amended) to Adjust the Annual Budget by Providing for Appropriations from the General Fund and Downtown Worthington Municipal Public Improvement TIF Fund Unappropriated Balances.

WHEREAS, the Charter of the City of Worthington, Ohio, provides that City Council may at any time amend or revise the Budget by Ordinance, providing that such amendment does not authorize the expenditure of more revenue than will be available;

NOW, THEREFORE, BE IT ORDAINED by the Council of the Municipality of Worthington, County of Franklin, State of Ohio:

SECTION 1. That there be and hereby is appropriated from the General Fund and Capital Improvements Fund unappropriated balances to:

<u>Account No.</u>	<u>Description</u>	<u>Amount</u>
<b><u>General Fund #101</u></b>		
101.2020.511151	Overtime – Police Community Service	\$ 100,000.00
<b>General Fund Totals</b>		<b>\$ 100,000.00</b>
<b><u>Downtown Worthington TIF #935</u></b>		
935.9020.540528	County Auditor Fees	\$ 1,575.00
935.9020.560980	TIF Fund Reimbursement	\$ 5,725.00
<b>Total TIF Funds</b>		<b>\$ 7,300.00</b>

SECTION 2. That notice of passage of this Ordinance shall be posted in the Municipal Administration Building, the Worthington Library, the Griswold Center and the Worthington Community Center and shall set forth the title and effective date of the Ordinance and a statement that the Ordinance is on file in the office of the Clerk of Council. This Ordinance shall take effect and be in force from and after the earliest period allowed by law and by the Charter of the City of Worthington, Ohio.

Passed \_\_\_\_\_

\_\_\_\_\_  
President of Council

Attest:

\_\_\_\_\_  
Clerk of Council